

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

-against-

PHILLIP A. KENNER,

Ind. No.
13 cr 607 (JFB)

Defendant.

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**MEMORANDUM OF LAW IN SUPPORT OF
MOTION PURSUANT TO RULE 33 OF THE
FEDERAL RULES OF CRIMINAL PROCEDURE**

PRELIMINARY STATEMENT

The Memorandum of Law is submitted in support of Defendant Phillip A. Kenner's Motion for a New Trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure.

RELEVANT PROCEDURAL BACKGROUND

On July 9, 2015, following a jury trial, Mr. Kenner and Co-Defendant Tommy C. Constantine were found guilty of conspiracy to commit wire fraud, conspiracy to commit money laundering and related substantive counts of wire fraud.

Following the trial, by letter dated July 29, 2015, Mr. Kenner's trial counsel (Richard D. Haley, Esq.) indicated he would not be filing a Motion pursuant to Rule 29 of the Federal Rules of Criminal Procedure. (ECF Doc. 325). However, in the letter, Mr. Haley indicated he intended to join common issues of law and fact in motion, to be filed by Constantine, seeking a new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure.

By Motion Letter dated, November 23, 2015, Constantine filed a post-trial motion seeking a judgment of an acquittal, and a new trial, pursuant to Rules 29 and 33 of the Federal Rules of Criminal Procedure. (ECF Doc. 346).

By *pro se* letter dated July 10, 2016, Mr. Kenner requested the Court discharge his trial counsel and appoint new counsel to represent him (the "July 10th Letter"). (ECF Doc. 386). Submitted along with the July 10th letter was a data disc prepared by Mr. Kenner (the "First Disc"). The July 10th Letter indicates the First Disc, among other information, contains documents and other writings which:

- 1) Were submitted in response to an inquiry made by the Court (during the course of Mr. Kenner's testimony, on April 6, 2016, during the post-trial forfeiture hearing); and,
- 2) Addressed the Court's request for testimonies of Robert Gaudet who witnessed the signing of a loan agreement between Mr. Kenner and Ken Jowdy. Regarding this request, among other documents and information, the July 10th letter indicated the disc included testimony of Gaudet (which occurred during various legal proceedings wherein he attested to Mr. Kenner and Jowdy signing the loan agreement) and

testimony of Jowdy (which occurred during a legal proceeding wherein he acknowledged the existence of the loan agreement).

Pursuant to Mr. Kenner's Motion for appointment of new counsel, on August 1, 2016, I (undersigned counsel to this Memorandum) appeared before the Court and was appointed as counsel. During the proceeding, Mr. Kenner sought to supplement the July 10th Letter and First Disc by tendering an additional disc (the "Second Disc"). However, due my not having an opportunity to review the Second Disc, it was not submitted to that time.

Following my appointment, I reviewed the First and Second Disc. Collectively, they contain several hundred, and possibly over a thousand, pages of *pro se* reports and cover letters prepared by Mr. Kenner and addressed to the Court. The Discs also include more than a thousand pages of exhibits. Among other information, the cover letters in the Discs supplement the court two court inquires, referenced in the July 10th Letter, and indicate specify they are submitted in response to the following inquiries made by Court during the Forfeiture Hearing:

Court Inquiry Referenced in Cover Letter in First Disc

THE COURT: Are you saying you recently recovered documents?
Are you saying since the trial you recently recovered documents?

THE WITNESS [MR. KENNER] : The term recently may have been misspoken. I apologize, your Honor. Out of my 89,000 text messages, I went back to corroborate some of what I believe were factual

inaccuracies by some of the witnesses and based on some of the documents that were delivered to Mr. Haley in preparation for the forfeiture hearing, and I saw they were going to introduce Mr. Nolan's testimony that he was unaware of a line of credit, that he never signed a line of credit, nor had he ever given me authorization to open up a line of credit. So I went back into our text message traffic from December 2007 where he and I had about a five day interaction over text messaging, and I found a text message that I had sent to him in response to his question what are the papers for, and I clearly laid it out and I can provide that to the Court as well. So Mr. Nolan was clearly aware, in '07 in addition to 'O6, 'O5, '04 and '03 when he signed documents sent directly to him. And all of those documents, your Honor, were delivered to us as part of the Northern Trust subpoena box.

THE COURT: If you have uncovered any documents since the trial that you believe suggest that there is something inaccurate about the testimony in the trial, Mr. Haley should definitely submit them to me.

THE WITNESS: Yes, sir. We will do so. Thank you, your Honor.

ECF Doc. 377-1, Transcript of hearing held on April 6, 2016, pp. 206-7).

Inquiry Referenced in Cover Letter in Second Disc

Q. Mr. Kenner, you just testified that Mr. Gaudet gave a deposition in the Little Isle IV Jowdy lawsuit, correct?

A. That is correct.

Q. Actually, what you said in that deposition transcript was that he remembered signing a document, but he could not identify the loan document; isn't that correct?

A. All I can recall from that July 2nd, 2009 deposition is Mr. Gaudet confirming on approximately 10 different occasions that he had signed and witnessed the loan agreement between Mr. Jowdy and myself.

Q. Mr. Kenner, what Mr. Gaudet actually said was he did not recall that document. He recalled seeing something, but not that document; isn't that what he testified to?

A. I don't believe that to be accurate.

MR. CONWAY: Your Honor, if you'd like, I have the deposition downstairs. I can bring it back up and submit it to the Court in writing.

MR. HALEY: Judge, if I may, it is our intention, I think the Court ought to have all the deposition exhibits and testimony that relates to what persons said about the legitimacy and authenticity of that loan document for the Court's consideration, so I have no objection.

THE COURT: Yes, I'd like to read it. Okay.

MS. LEONARDO: I'll do that in writing, your Honor.

MR. HALEY: Judge, in addition, of course, we'll be introducing the deposition -- well, deposition transcript from the AAA proceedings has already been introduced. I'm just reserving my right to introduce the testimony as adduced at trial that was referred to where Mr. Jowdy and his attorneys introduced that document, actually identified as Exhibit 89-A as an authentic document.

THE COURT: I'd like to see that, too, if you have it.

(ECF Doc. 377-1, Transcript of hearing held on April 6, 2016, pp. 288-90).

Although, Mr. Kenner indicates the First and Second Disc are prepared in response to foregoing queries, pursuant to my review, it appears, by these submissions, Mr. Kenner is actually seeking relief via a *pro se* motion for a new

trial pursuant to Rule 33.¹ Accordingly, during a status conference held on September 15, 2016, I indicated I viewed his arguments in the First and Second Discs as a *pro se* Rule 33 Motion. Further, In addition, due to the the voluminous nature of these submissions, coupled with the format in which they are presented, I proposed submitting a “roadmap” letter or memorandum would provide a guide to the submissions on these Discs.

Following the status conference, I have conferred with Mr. Kenner and suggested he combine, reorganize and pare, his submissions on the First and Second Disc. Pursuant to this suggestion, Mr. Kenner has prepared a revised submission (the “Third Disc”) which is submitted along with this Memorandum of Law. The Third Disc replaces the First and Second Discs.

By this Memorandum of Law, I am providing a roadmap to Mr. Kenner’s *pro se* arguments, in support of his *pro se* Rule 33 Motion, which are contained in the Third Disc.

¹ I have discussed Rule 33 with Mr. Kenner and he confirms that he seeks Rule 33 relief. I view the Haley Letter, dated July 29, 2015, as a timely Rule 33 Motion (ECF Doc. 325). Nonetheless, since a formal Notice of Motion, stating Mr. Kenner expressly seeks relief pursuant to Rule 33, for purposes of clarifying the record, along with the filing of this Memorandum of Law, I have filed a formal Amended Notice of Motion. I request the Amended Notice of Motion be deemed *nunc pro tunc* to the date of Mr. Haley’s July 29, 2015 letter.

CONTENTS OF THE THIRD DISC

The Third Disc contains five folders entitled as follows:

- 1) Rule 33 - Notice and Memorandum;
- 2) Rule 33 - Pro Se Points;
- 3) Rule 33 - Exhibits;
- 4) Rule 33 - Appendix; and,
- 5) Appendix Exhibits.

THE APPLICABLE LAW

This Court has had occasion to rule upon motions for a new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure. Regarding Rule 33, this Court has indicated:

Rule 33 states, in relevant part, that “[u]pon the defendant's motion, the court may vacate any judgment and grant a new trial if the interest of justice so requires.” Fed. R. Crim. P. 33(a). A district court may grant a Rule 33 motion only in “extraordinary circumstances,” *United States v. McCourty*, 562 F.3d 458, 475 (2d Cir.2009), and only if there exists “ ‘a real concern that an innocent person may have been convicted.’ ” *United States v. Parkes*, 497 F.3d 220, 232 (2d Cir.2007) (quoting *United States v. Ferguson*, 246 F.3d 129, 134 (2d Cir.2001)); accord *United States v. Bell*, 584 F.3d 478, 483 (2d Cir.2009); see also *United States v. Middlemiss*, 217 F.3d 112, 122 (2d Cir.2000) (“Granting Rule 33 motions is not favored and is done with great caution.”). “The ultimate test on a Rule 33 motion is whether letting a guilty verdict stand would be a manifest injustice.” *Ferguson*, 246 F.3d at 134. *U.S. v. Martinez*, 978 F.Supp. 2d, 177, 187 (JFB) (EDNY 2013); see also, *U.S. v. Barlow*, 732 F.Supp. 2d. 1,5 (JFB)

(EDNY 2010); *U.S. v. Abdallah*, 840 F.Supp. 2d. 584, 611 (JFB) (EDNY 2012).

SUMMARY OF THE CONTENTS OF FOLDERS IN THE THIRD DISC

Rule 33 - Notice and Memorandum of Law

This folder contains the Notice of Motion and this Memorandum of Law. As indicated herein this Memorandum of Law outlines the contents of the Third Disc and includes discussion on the applicable law.

Rule 33 - Pro Se Points

This folder contains Mr. Kenner's *pro se* arguments in support of the Rule 33 Motion. It contains three argument Points. These Points are revisions, reorganization, and a paring of the arguments raised in his *pro se* submissions on the First and Second Discs.

In *Martinez*, *Barlow*, and *Abdallah*, albeit unsuccessfully, the defendants sought Rule 33 relief based upon various grounds including: i) *Brady* violations; ii) newly discovered evidence; iii) prosecutorial misconduct; and iv) the verdict being against the weight of the evidence.

In these Points, Mr. Kenner seeks relief based upon these grounds. Recognizing that Rule 33 relief is only granted in extraordinary cases where there

is a real concern that an innocent person may have been convicted, he contends he is entitled to relief.

Pro Se Point I (Brady Violation)

Following the trial, and prior to the forfeiture hearing, the Government turned over documents and hearing exhibits which had not been disclosed prior to trial. Among other items, these disclosures included Government Forfeiture Exhibit 44 (“FORF 44”) and Frailes contracts. He also references depositions of Berard and Kaiser, occurring during 2012 in the course of a litigation in Arizona, which have not been turned over to him.

In this Point, Mr. Kenner argues and describes how the failure to disclose these items, prior to trial, is a *Brady* violation.

Pro Se Point II (Newly discovered Evidence)

In this point, Mr. Kenner contends that, following the trial, he received signed copies of retainer letters sent by attorney Thomas Baker to many of Mr. Kenner’s hockey players clients including ones who were members of Little Isle IV and testified during the trial. In the retainer letter, Mr. Baker indicated he is contemplating representing the hockey players in an Arizona litigation seeking to sue Ken Jowdy to recover approximately \$5.0m in loans made to Jowdy by Mr.

Kenner for the benefit of the hockey players. The retainer letter was signed by many of the hockey player/trial witnesses who -- contrary to the information disclosed in the Baker retainer -- alleged, during the trial, they were unaware of the loans to Jowdy. In this Point, Mr. Kenner makes arguments relating to information disclosed in the retainer letter and other allegations/issues related to the Arizona litigation.

Also, Mr. Kenner alleges the Northern Trust documents, which earlier disclosure was objected to by the Government, are newly discovered evidence (for Rule 33 purposes) as they were not received in a timely manner.

Pro Se Point III (Prosecutorial Misconduct)

In this point, Mr. Kenner contends the Government engaged in prosecutorial misconduct during the course of the trial and prosecution. Pages three through four, in this Point, contain a Table of Contents wherein Mr. Kenner specifies eighteen instances of prosecutorial misconduct.

Rule 33 - Exhibits

This folder contains 472 Exhibits which are cited in the three *pro se* Argument Points. These Exhibits consist of 464 single document items and 8 folders which contain multiple documents. Due to the volume of these items they

have been placed in a separate electronic folder (instead of being attached to the *pro se* Argument Points) in order to facilitate review.

Rule 33 - Appendix

This folder contains a series of *pro se* Reference Reports about the following persons or issues specified as follows:

- EDNY -- Gaarn – Standard Ventures Eufora Private stock ownership
- EDNY -- Gaarn issues report
- EDNY -- Mascarella issues
- EDNY -- Nolan issues
- EDNY -- Northern Trust Bank subpoenaed records
- EDNY -- Peca issues
- EDNY -- Sag Harbor issues
- EDNY – Dixon-Myrick issues
- EDNY – Jowdy loan disclosure issues
- EDNY – Kaiser, Berard & Jowdy related issues
- EDNY – Manfredi issues
- EDNY – McKee issues
- EDNY – Ranford issues
- EDNY – Rucchin issues
- EDNY – Sydor issues

In *pro se* Point III (Prosecutorial Misconduct), at page 2, Mr. Kenner refers to these items as “reference reports with the details of the various witness and government frauds confirmed and substantiated by real evidence (not hearsay) against Kenner throughout the trial.” He indicates these Reference Reports are provided to the Court as supplemental, and more detailed, information regarding the specific person or issue.

Appendix Exhibits

This folder contains 178 Exhibits which are cited in the Appendix. These Exhibits consist of 172 single document items and 6 folders which contain multiple documents. Similar to the Rule 33 Exhibits, due to the volume of these items they have been placed in a separate electronic folder (instead of being attached to the Appendix) in order to facilitate review.

CONCLUSION

Based upon the foregoing reasons, it is respectfully requested this Motion be granted in its entirety.

Dated: Bayside, New York
November 28, 2016

Respectfully submitted,
/s/
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TO: Diane Leonardo, AUSA
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All counsel of record via ECF

Pro Se Point I

BRADY for Rule 33

This is the issue that relates to the Kenner BRADY claims addressed by Bianco in previous Rule 33 motions.

Whether the defendant was prejudiced by any suppression.

BRADY ISSUES –

- ***FORFEITURE-44 (also “new evidence”) -- page 2***
- ***Frailes contracts (also “new evidence”) – page 19***
- ***2012 AZ case depositions with Berard and Kaiser – page 25***
 - ***Trial transcripts***

BRADY for Rule 33**FORFEITURE-44**

The government produced exhibits **FORFEITURE-44** (see R33 001 -- **FORF-44**) during their forfeiture hearing case-in-chief thru Agent Wayne. It was a document created by Jowdy and his attorneys, according to Wayne's testimony, reflecting the "**loans**" Kenner and his Hawai'i companies made to Jowdy from 2004 thru 2006 – pursuant to the 2004 Revolving Line of Credit agreement (see R33 002 -- **Hawaii RLOC w Jowdy**).

Agent Wayne confirmed the **FORFEITURE-44** loan confirmation spreadsheet came from Jowdy and his attorney (*Tom Harvey*) during the forfeiture hearings as follows --

See R33 030 -- Wayne introduces Jowdy's loan confirmation spreadsheet

- If the government claim is that they had the information from Jowdy and his attorneys before the trial – then their entire Hawai'i prosecution theory was prejudicial and foundationless. Twenty-two (22) examples of Jowdy &/or Kenner investors confirmed loans to Jowdy prior to the trial -- despite the EDNY selective amnesia.
- ***Either way – the government needs to be held accountable through a Brady violation &/or Rule 33 – as the entire Jowdy claims by the government and the prejudice to Kenner about "stealing" the funds the government has now authenticated as "loans" would have produced a different outcome for Kenner – and at a minimum – a Grand Canyon-size hole in the government's theories thru rebuttal summation.***

During rebuttal summation -- Komatireddy showed no boundaries in her misrepresentation that Kenner stole the funds to get his equity in the Diamanté Cabo project. Kenner never said anything close to that during 6 days on the witness stand during trial.

7 Since they can't prove conspiracy, they allege
 8 government misconduct because of a lack of investigation.
 9 Mr. LaRusso gave you various examples. First he says, you
 10 know what, Baja Development Corporation, on that chart,
 11 but there is some sort of misconduct; you don't know what
 12 the money was for. You know exactly what the money was
 13 for. In fact, Mr. LaRusso, when the first witness got on
 14 the stand, one of his first exhibits he offered into
 15 evidence was a record of the Baja Development Corporation.
 16 Those records are in evidence.
 17 Mr. Kenner told you that he used that money to
 18 get his piece in the Mexico investment with Ken Jowdy.
 19 You know exactly what that's for. That's in evidence.

BRADY for Rule 33***That is not in evidence...***

The government and Agent Galioto worked hand-in-hand with Jowdy and his attorneys since the first notification of the Jowdy 2009 EDNY Grand Jury to prosecute Kenner, as evidenced by the Kenner AMEX subpoena (*of July 8, 2009*) only two weeks after Kenner told Galioto about the \$25mm in Jowdy frauds on June 24, 2009. No discussions of Kenner's AMEX came up in the June 24, 2009 proffer -- and no witness interviews were produced in the 3500 materials before the date of the AMEX subpoena by Galioto, leaving only one conclusion; *Jowdy and his attorneys (to begin the financial handi-capping of Kenner and his future efforts to pursue Jowdy thru all legal means)*. The anti-Kenner slander stories in the NY Daily News (*thru Jowdy's attorney, Tom Harvey*) began immediately after the Kenner subpoena was sent to AMEX -- effectively ending a 15-year unblemished Centurion (*Black Card*) relationship for Kenner.

The timing of the **FORFEITURE-44** deliverable from Jowdy's team to the government raises a number of suspicions in a prosecution effort that began six (6) years prior to trial.

During Jowdy's earliest proffer sessions in 2010 -- Jowdy confirmed to the FBI, SDNY Criminal Investigator, the SEC and the AUSA that he not only fraudulently used investor funds to pay personal expenses (*i.e. -- embezzlements*) (**See R33 023 -- Baja Development Corporate -- August 2002 statement**) and (**see R33 024 -- Jowdy March 2010 FBI proffer**).

- Jowdy **confessed** to the FBI and AUSA's office to taking funds from the investors for his own personal use -- **unknown to Kenner &/or the investors** -- booking them as loans -- and the government/Galioto has no problem.
- In contrast --
 - Kenner loaned funds under the authorization of the Little Isle 4 operating agreement to Jowdy under a loan agreement (*authenticated by Jowdy's own Nevada attorneys in his trial defense -- not to mention the loan agreement's witness on 3 separate occasions*).
 - The loans were known to all of the investors (*see pre-2015 testimony*).
 - Then, Jowdy decided to steal the funds as soon as he received the \$125mm loan from Lehman Brothers (*and confessed to it in a January 2010 deposition before he told the FBI in March 2010 that he took the loans -- from Hawai'i*) -- and
 - Galioto decided to forgo the \$25mm in investor funds that Jowdy has clearly misappropriated, embezzled and stolen (*and confessed to*) from Kenner and the Kenner investors and PROSECUTE Kenner (*through a scorched earth assault on every business relationship of Kenner's for 20 years*) -- alleging the loans (*that **EVERYONE INVOLVED CONFIRMED PRE-TRIAL***) were a fraud.
 - **How has this activity gone unchecked since 2010 (the time of the Jowdy confessions to the FBI)?**

The government also received a special subpoena days before the start of the trial in April 2015, which confirmed Jowdy's initial thefts thru Baja Development Corp from Kenner and the first two Kenner investors (*Woolley and Khristich*).

BRADY for Rule 33

***See R33 023a -- Aug 2002 Baja Development Corp record (subpoena April 2015)
Certificate - TD with attachments***

At that point in 2010 -- Galioto and the government knew the Hawai'i money sent to Jowdy were "**loans**" -- since Jowdy (*who received the money*) **CONFIRMED the LOANS for the second time in 2 months -- and ONCE DIRECTLY to Galioto's own ears.**

Jowdy was represented by both NY attorney Tom Harvey and Former FBI Director Louis Freeh at that time. (***See R33 026 -- Jowdy confirms Freeh and Harvey as defense attorneys***)

Please note that this is the same attorney (*Tom Harvey*) who tried to EXTORT Kenner thru Kenner's attorney (*Paul Augustine*) in an April 2009 email that the FBI and SEC were investigating Kenner, but Kenner could mitigate his terrible position by "**giving up all of his equity in the two (2) México projects**" run by Jowdy.

In the extortion email -- Harvey explained to Kenner's attorney that since Kenner claimed the funds sent to Jowdy were "**loans**" (*which Jowdy confirmed himself 8 months later*) -- Harvey would easily sue Kenner and get the México equity **BECAUSE** Kenner claimed that the funds were "**loans**"...which according to his own (**FORFEITURE-44**) records turned over to the government in 2016 -- **WERE LOANS!**

None of the other issues prosecuted by the government in the 2013 Indictment were "*of knowledge*" to Harvey at the time -- thus his entire extortion-intimidating mantra was based on a falsity that his own client (*Jowdy*) refuted in his January 2010 deposition and directly to the FBI (*Galioto*) and other DOJ individuals two months later (*March 2010*).

Notwithstanding Jowdy's **confessions** in 2010 -- when the timing of the confessions better suited his own litigation defense strategies (**ONLY after the dismissal of the \$5mm AZ case -- with Harvey's "NO LOANS" threats**) -- the government still echoed that prejudicial and outright false theory during their 2015 trial prosecution from opening remarks to rebuttal summation -- ignoring the overwhelming Jowdy confessions and other witness evidence -- further prejudicing Kenner and any chance for a fair trial.

See R33 027 -- Harvey EXTORTION THREATS to Kenner (April 2009)

Kenner sued Jowdy and Harvey in CA for EXTORTION on July 2, 2009 thru attorney Ronald Richards weeks after the México investors sued Jowdy. The investor's litigation versus Jowdy triggered the initial contact by Galioto in June 2009 thru the plaintiffs' attorney, Ronald Richards...

- Please note that about 30-days after Kenner sued Harvey (*Freeh's defense partner in the Jowdy various DOJ investigations*) (*see below*) & proffered with Galioto on June 24, 2009 -- a SDNY Grand Jury investigation was convened on Kenner by Galioto.

Throughout the trial -- the government took the position that the loans to Jowdy were a fraud contrived by Kenner (& *Constantine*) to divert the attention from the fact that the government wanted the jury to believe that Kenner actually **stole** the funds from the Hawai'i companies in order to buy into the Jowdy project in México.

BRADY for Rule 33

- Please note that there was no project at the time, and it was not under Jowdy's control until he coordinated the theft of the Managing Member position just prior to the closing – under the guise that Lehman Brothers would not complete the \$125mm funding deal with Kenner as the co-Managing Member (*later discovered to be false*).

In fact – Komatireddy cemented the government theory about the alleged stolen Hawai'i funds – sent to Jowdy's Baja Development Corp – and used to buy Kenner's Cabo equity during her rebuttal summation (*despite the evidence presented about the source of Kenner's Cabo funds years prior in the 2009 Nolan arbitration and again during the forfeiture hearings by Kenner*).

See R33 032 -- Komatireddy LIES about the source of Kenner's Cabo equity funds

- Kenner's testimony NEVER occurred in the EDNY. It was just another Government defamatory LIE.

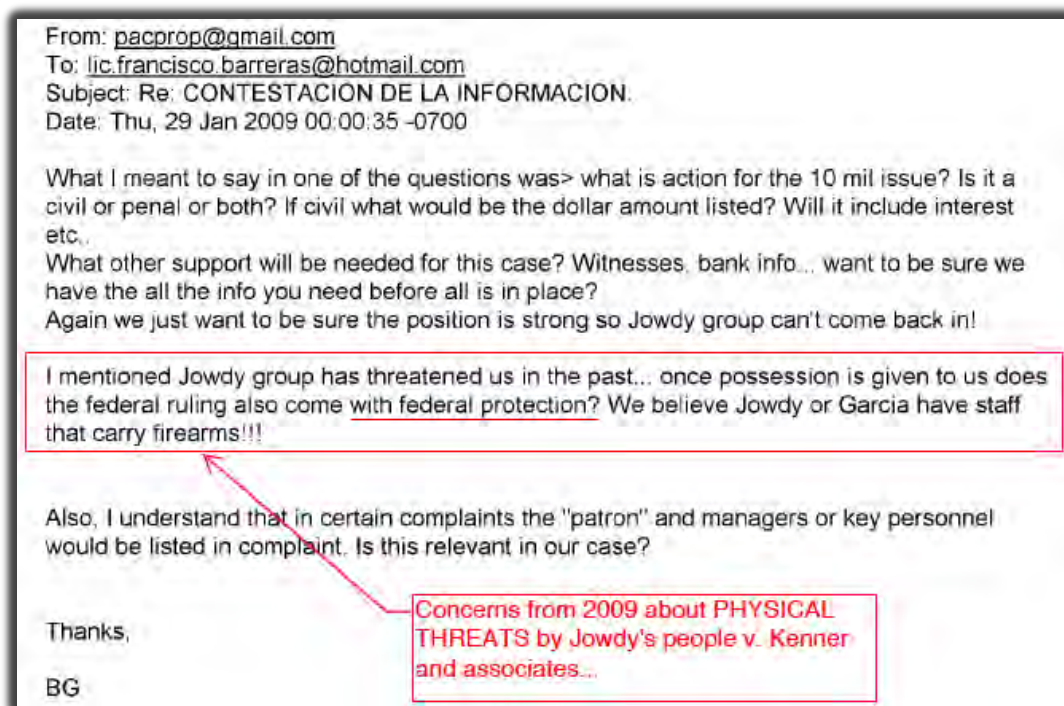
Jowdy's NY attorney, Tom Harvey, who was co-defense-counsel with Former FBI Director, Louis Freeh, for Jowdy since the tumultuous negotiations broke down between Kenner and Jowdy in late 2007 worked religiously with Agent Galioto and AUSA Michiewicz in Kenner's prosecution. This occurred while Jowdy was attempting to release all of his criminal and civil liabilities from Kenner and the Kenner investors for years of unpaid loans and funds embezzled from multiple projects, including but not limited to Diamanté del mar (*over \$10mm*), Diamanté Air (*over \$2mm*), Diamanté Cabo (*over \$4.5mm*), Cabo san Lucas Airport (*over \$1mm*), Hawai'i loans (*over \$5mm*), Stumpel México loan (*\$1.6mm*), Norstrom México loan (*\$500,000*), et. al. –.

- Freeh's retainer of over \$1,000,000 (*confirmed by former Jowdy employee, Matt Boland*) was paid for with more diverted funds from the Diamanté Cabo budget – *and not reported to the investors*.

Harvey's first attempt to threaten Kenner (*a pattern of activity that is heavily documented in the EDNY evidence – including the threats Gaudet received from Harvey in 2008 – memorialized in Gaudet's July 2, 2009 deposition*) originated in the April 2009 extortion email to Kenner's attorney, Paul Augustine. Kenner litigation versus Jowdy and Harvey for extortion in CA in July 2009, created an all-out-assault by Harvey of both phone call threats to Kenner and Kenner associates (*documented*), the FBI inquiries into all of Kenner's decade-plus long banking relationships (*ultimately destroying them*), and the origination of the Harvey-led NY Daily News slander stories by Harvey's friend and colleague, Michael O'Keefe.

In January 2009 – when the first México legal efforts expected the state court in Baja California Sur, México to produce a “**receivership order**” for Kenner and “**arrest warrants**” for Jowdy and his cabal – former Jowdy employee and Jowdy litigant expressed his safety concerns to his attorney about Jowdy and his threatening cabal (*below*).

BRADY for Rule 33



Jowdy's former employee, Robert Gaudet, as a witness on three separate occasions, confirmed the 2004 Hawai'i loan agreement as witnessed and authentic -- as follows --

1. May 2009 testimony during the Nolan v. Kenner AZ Arbitration

See R33 006 -- Nolan Arbitration Transcript Day 5 - Gaudet testimony (page 9),

2. July 2, 2009 deposition in the AZ case, Little Isle 4 v. Jowdy (for the \$5mm in unpaid loans),

See R33 009 -- AZ -- July 2, 2009 Gaudet signature confirmation deposition

See R33 010 -- Gaudet confirms THREATS from Harvey related to his witnessing the loan agreement...

3. And the -- December 2010 testimony during the Glen Murray v. Jowdy NV trial.

See R33 011 -- Gaudet testimony in Nevada case Murray v. Jowdy (December 2010)

In a stunning turn-of-events (*further eclipsing the Jowdy January 2010 confessions*) -- in the Nevada December 2010 Jowdy defense case -- **Jowdy's attorneys authenticated, verified and admitted the Hawai'i loan agreement as a Jowdy defense exhibit in the Nevada case** -- Glen Murray versus Jowdy (*v. Kenner 3rd party cross-complainant in Pro Se*) (*See R33 011*).

BRADY for Rule 33

The EDNY Court previously requested the multiple Gaudet confirmations of his witness on the 2004 Hawai'i loan agreement (*see R33 005 – Gaudet “witness” testimony requested*).

The loan to Jowdy and the 2004 loan agreement were consistently mocked and ridiculed by the government – at times referring to the loan agreement as “**bogus**” (*see R33 004 – Michiewicz calls Jowdy loan a “bogus loan”*) and “**supposed**” (*see R33 003 – Komatireddy calls Jowdy loan “supposed”*) and calling Kenner a “**liar**” (*see R33 012 -- Michiewicz calls Kenner a liar*).

The authentication of the loan agreement and loans to Jowdy was wholly consistent with the testimony that Kenner gave at the EDNY trial and at all times prior. No government witness refuted the authenticity of the agreement – *only contradicting government proffer (except Kaiser's unsolicited “forgery” claims)*.

The government's prosecution theory was inconsistent with all Kenner's representations of the loans to Jowdy since Kenner's original 2008 AZ case filings versus Jowdy for the \$5mm PLUS in unpaid loans from Hawai'i – Little Isle 4 and Ula Makika.

- *Please note that that when the Little Isle 4 attorneys filed the original case versus Jowdy (detailing the loans, amounts and dates of the transfers to Jowdy) – Kenner was in Moscow, Russia handling business for multiple clients and was not aware of the actual filing until he returned a week later. The attorneys explained they could not wait any longer since there were statute of limitations issues they were concerned about in a Jowdy defense. The attorneys were also waiting for Kaiser to send the 2004 Hawai'i loan agreement to them (confirmed in Kaiser EDNY testimony), but filed anyways. The complaint in AZ was amended once the attorneys received the loan agreement from Kaiser.*

Kenner hotel charges in Moscow the day of the case filing --

10/28/08	NOVOTEL-SHEREMETYEVO MOSCOW REG. LODGING	13,582.00 **Russian Federation Ruble	507.28
10/28/08	NOVOTEL-SHEREMETYEVO MOSCOW REG. LODGING	11,050.00 **Russian Federation Ruble	412.71

In addition to Michiewicz' personal feelings of Kenner while Michiewicz called Kenner a “**liar**” multiple times on the witness stand (*despite clear and convincing real contradictory evidence in the government's possession*) – Michiewicz possessed the following evidence pre-trial (*all ignored by Michiewicz, Komatireddy, Galioto and Wayne*) which corroborates Kenner's trial testimony related to –

- The Hawai'i loans to Jowdy...
See Jowdy proffer 3/2010 to Galioto – *see R33 024*

See Jowdy January 2010 depositions -- *see R33 040*

See Gonchar 2/2010 proffer to Galioto – *see R33 013*

See Kaiser 2009 arbitration testimony – *see R33 031*

BRADY for Rule 33

See Berard 2009 arbitration testimony – **see R33 033**

See Constantine 2009 arbitration testimony -- **See R33 051**

See Gaudet 2009 arbitration testimony (page 9) – **see R33 006a**

See Jowdy/Constantine July 2007 “**debt to Kenner**” emails during settlement discussions – **see R33 034**

CRITICAL -- November 2007 Jowdy/Constantine/Najam emails during Lehman Brothers settlement discussions confirming Lehman Brothers **FULL KNOWLEDGE** of the loans Jowdy owes in November 2007 – **See R33 050**

See Jowdy's Nevada attorney's authentication, verification and admission of the 2004 Hawai'i loan agreement in his defense case -- **see R33 011**

See Gaudet July 2, 2009 AZ deposition re – 2004 Hawai'i loan agreement -- **see R33 009**

- Kaiser being fully repaid from his \$1.1mm Hawai'i loan/investment in August 2005...
 - See R33 052 -- Kaiser paid \$1.176mm at JV closing**
 - **See R33 053 -- Equity Transfer Agreement \$360,000 with Kaiser-Kenner**
 - **See R33 054a -- Naalehu Management transfer to Kaiser**
 - Kaiser being fully repaid from his share of the CA Beach House renovation project profits...
 - See R33 014 -- \$1.7mm REPAYMENT fraud...Kaiser CA funds**
 - See R33 B -- Kaiser \$1.7mm REPAYMENT back-up records**
 - **See APP077 -- HER 133-135 (\$1.4mm not \$2mm as Kaiser Claims)**
 - **See APP088 -- Ledbetter loan (to Kaiser) w Kenner notes about lis pendens to protect the loan**
 - Kenner's testimony about the **EDNY Grand Jury subpoena** to testify about Jowdy and the termination of the same subpoena 10-days later (*without explanation*)...
 - **See EDNY Trial transcripts from Page 5047; line 22 thru Page 5065; line 17**
- **Please note that Michiewicz accuses Kenner of lying about –**
- A NY Grand Jury subpoena to testify about Ken Jowdy,
 - A termination letter for the NY Grand Jury subpoena,
 - A conspiracy between the FBI Agent (*Galito*) and Jowdy's counsel who terminated Jowdy's NY Grand Jury without any victim interviews (*specifically NOT Kenner*),
 - A NY Grand Jury date for Kenner to appear,

BRADY for Rule 33

- The NY AUSA in Manhattan and the FBI not wanting Kenner under oath...*insinuating throughout that Kenner was avoiding giving testimony (like the Kaiser EDNY testimony about Kenner instructing him to NOT talk to the FBI),*

17 Q. And your testimony is that the FBI, the U.S.
18 Attorney's Office in Manhattan did not want you under oath
19 in a deposition essentially or transcript which might at
20 some point prove valuable, like right here. Is that your
21 testimony?
22 A. I was excited and willing to testify in front of the
23 Southern District or whoever the Government asked me to
24 testify at that point in 2009.

- Jowdy delivering PEDs (*Performance enhancing drugs*) to Brian McNamee (*Roger Clemens' trainer who testified in front of Congress*) and Roger Clemens directly,
- Jowdy providing SEX-for-HIRE for Clemens and other baseball players,
- Kenner not telling the Clemens inquiry FBI agents that Kenner wanted to testify in an unrelated matter for Agent Galito,
- Kenner immediately telling the FBI and AUSAs on the June 24, 2009 phone interview that Kenner was a resident of Boulder, CO (*notwithstanding Kenner was "IN" Boulder, CO with his family and girl friend the day of the phone interview*),
 - *Insinuating that once Kenner finally had a the DOJ "helping" Kenner and his frustrated investors after 24 months of fruitless negotiations with Jowdy and his attorneys – the first thing Kenner wanted to do was LIE to the FBI about where Kenner lived?!@?*
- About Kenner telling people that Kenner was living in a hole and or in a cave in México,

23 Q. I assume you reject that as you have I think you have
24 previously rejected any suggestion that you told people
25 that you were living in a hole or in a cave in Mexico.

5058

1 Certainly that is untrue, is that your testimony?
2 A. I'm sorry. I didn't follow the question.

- Jowdy STEALING funds from Kenner and his clients, (*see the following*)

BRADY for Rule 33

1. *R33 001 -- FORF-44 (produced by the government),*
 - a. *R33 030 -- Wayne introduces Jowdy's loan confirmation spreadsheet*
2. *R33 024 -- Jowdy March 2010 FBI proffer,*
3. *R33 013 -- Gonchar February 2009 FBI proffer,*
4. *R33 015 -- NV ruling in Murray v Jowdy,*
5. *R33 017 -- Stumpel 1.6mm loan to Jowdy,*
6. *R33 018 -- Jowdy confirms \$1.6mm UNPAID Stumpel loan,*
7. *R33 019 -- Jowdy THEFT of Norstrom \$400k CSL Airport investment,*
8. *R33 020 -- \$500,000 Jowdy 2004 theft of Norstrom loan,*
9. *R33 021 -- Najam letter to Hudson Bank for 100k "money laundering",*
10. *R33 022 -- Baja Development Corp - August 2006 statement (Nolan DCSL theft),*
11. *R33 023 -- Baja Development Corp August 2002 statement (initial Jowdy thefts),*
12. *R33 028 -- CABO SAN LUCAS Golf Villa deposit THEFTS by Jowdy (2006),*
13. *R33 031 -- Kaiser 2009 testimony in the Nolan Arbitration,*
14. *R33 033 -- Berard contradictory testimony about the Jowdy loans,*
15. *R33 034 -- Jowdy-Constantine confirm \$8.5mm PLUS in debt to Kenner,*
16. *R33 040 -- Jowdy confirms loans to Baja Development Corp from Hawai'i and repayments,*
17. *R33 041 -- DDM Balance Sheet with Little Isle 4 & Ula Makika loans,*
18. *R33 042 -- Jowdy Mexico payables to Kenner,*
19. *R33 046 -- Kaiser knowledge regarding the loan agreement with Jowdy,*
20. *R33 049 -- Jowdy Diamanté air plane multi-million dollar thefts,*
 - a. *R33 049d -- Diamante Air loan history (\$140k theft)*
 - b. *R33 049e -- Jowdy theft of \$290,000*
21. *R33 050 -- Constantine Jowdy & Najam loan email for Lehman Brothers,*
22. *R33 051 -- Constantine testimony re- Jowdy loans -- Nolan Arbitration Transcript Day 5,*
23. *Etcetera...*

- Kenner actually denying Jowdy the México loans,

BRADY for Rule 33

4 Q. Isn't it true, sir, that during that interview, you
5 didn't say any of that, you said Mr. Jowdy had approached
6 you about needing capital for his Mexico project and you
7 in sum and substance were not interested because the
8 answers or information he gave to you were vague about the
9 investment, isn't that true?
10 A. That wouldn't make any sense considering my clients
11 and I loaned Mr. Jowdy in the neighborhood of \$25 million.

- Kenner telling the FBI that Michael Peca decided to invest in Jowdy's México project against Kenner's recommendations (*per Kenner's Boulder CO interview notes – despite it not being in the notes – PK-1*),
- Giving Agent Romanowski and Galioto IRS information,
- Kenner fraudulently without being requested to share “*Privacy Right information*” (*whatever that really is*) with the Criminal Division of the IRS,
- Not producing the Hawai'i loan agreement from June 2009 thru March 2012,
- Turning over dates of birth and SSNs for people to the Criminal Division of the IRS without their requests, and
- Ultimately – Kenner just lying about “*everything*” ...

BRADY for Rule 33

18 Q. I'm confused with all due respect in sum and summary
19 -- I will do this as delicately as possible --
20 MR. HALEY: I object to the form, Judge.
21 THE COURT: Sustained. No comments. Ask
22 questions.
23 MR. HALEY: Thank you.
24 Q. Aren't you just making all of this up as you sit
25 there?

5085

1 A. No, sir.
2 Q. Aren't you lying about these documents, your
3 interactions with the people who relied upon you to take
4 care of their money? Aren't you just lying about
5 everything?
6 A. No, sir.
7 Q. Are you lying about even being summoned to the grand
8 jury and then dropped like a hot potato?
9 MR. HALEY: Now I will object, your Honor.
10 THE COURT: Sustained.
11 MR. HALEY: Thank you.
12 Q. Aren't you lying about being summoned to the grand
13 jury and then the FBI deciding they were going to favor
14 Mr. Jowdy in Mexico over you. Aren't you lying about
15 that?
16 MR. HALEY: Judge, I object.
17 THE COURT: Sustained.

- Multiple claims by alleged victims that they were unaware of the “**loan buyout**” efforts of Eufora Plaintiff attorney Stolper (*despite overwhelming text messages between the parties and their collective desire to participate in the buy out personally*)...

See R33 055 -- Eufora loan buyout LIES

With the evidence in the EDNY production – it is clear that Kenner did not lie about any of the issues alleged by Michiewicz (*above*).

Please note that Kenner has provided email, text, bank statements, signed bank documents, signed authorizations, etcetera that CLEARLY PROVE that each of the alleged victims who testified about the above matters PERJURED themselves in front of a knowing prosecution who sat idly by on each and every instance...and on most occasions assisted in the PERJURY thru leading and mis-leading RE-CROSS questioning to resurrect their witnesses when they became incapable of following the government “storyline” &/or “fabricated game plan”...

BRADY for Rule 33

At no point in the trial – thru the Indictment &/or forfeiture has the government produced any proof of why (“intent”) Kenner would have loaned funds to Jowdy WITHOUT any personal benefit &/or paid Constantine a consulting agreement – AGAIN WITHOUT a single benefit to Kenner.

No capital accounts are represented by the government in any Jowdy &/or Constantine companies representing a single benefit Kenner received from the well-documented and previously acknowledged deals.

As a result of Michiewicz’ badgering Kenner about the July 2009 subpoena to give testimony to the NY Grand Jury for Jowdy and Najam -- Kenner was forced to produce the Jowdy EDNY Grand Jury subpoena from July 17, 2009 as well as the dismissal letter from the AUSA on July 27, 2009 the day after Michiewicz called Kenner a liar for alleging that the government “***dropped Kenner like a hot potato***” to favor Louis Freeh’s client...(see R33 012 -- ***Michiewicz calls Kenner a liar***).

This subpoena was issued and terminated by Michiewicz’ own EDNY office – thus he was fully aware of both – specifically in conjunction with Agent Galioto’s EDNY involvement from day-1 in the subpoena and subsequent termination -- both in July 2009...

- Please note that a SDNY Grand Jury was convened on Kenner five (5) weeks after Kenner's original interview on June 24, 2009 – ***after*** Kenner confirmed to FBI agent Galioto that Jowdy had stolen, embezzled &/or misappropriated over \$25mm cash investments and loans from Kenner and his investors from 2002 thru 2009 (*and still ongoing today*) thru the following alleged investments –
 - August 2002 – Jowdy’s immediate THEFTS of Diamanté del Mar investor funds from Kenner, Khristich and Woolley (*over \$400,000 of their initial \$804,000 within 3 weeks*)

See R33 023 – Baja Development Corp – August 2002 statement

- Based on Kenner's initial August 2002 investment with Jowdy and Jowdy's immediate theft of the investor funds – the government could not have proceeded against Kenner and Constantine about “***making up***” the Jowdy thefts as a diversion...

See R33 023a – August 2002 Baja Development Corp record (subpoena April 2015) Certificate - TD with attachments

- Just days before the beginning of the trial – based on Kenner's previous representations to the FBI and the government -- the government subpoenaed ***ONLY*** the August 2002 (*first month of Jowdy thefts*) bank statement for Baja Development Corp – ***further confirming*** that they had real concerns for Jowdy's initial thefts as Kenner explained to Galioto on June 24, 2009 (*6 years earlier – and still unchecked*)...and Kenner had represented to the government throughout pre-trial.
- Diamanté del Mar – about \$10mm investments,

BRADY for Rule 33

See R33 024 -- Jowdy March 2010 FBI proffer

- Jowdy confirmed to Galioto and the government that he misappropriated initial Baja Development Corp investment funds to pay his personal expenses – but booked the thefts as personal (*not reported and unsanctioned*) loans to himself...
- Diamanté del Mar – about \$3mm hard money loan (*embezzled February 2006*),

See R33 056 - KSI loan email -- NO funds to developer (page 2)

- Jowdy emailed Kenner to explain his biggest concern with a KSI loan (*and the reason not to take it*) was “***they have been pretty strict with our use of funds, and they adamant that none of the funds go to the developer***”.
- Even though Jowdy and Najam NEVER disclosed the \$3mm, February 21, 2006 loan closing to Kenner &/or the Diamanté investors – Jowdy and Najam looted about \$1mm from the net \$2.2mm in loan proceeds of their own personal benefit thru DDM, Baja Development Corp and LOR Management accounts (*in EDNY evidence*) – before defaulting on the loan and creating a \$10mm PLUS loss to Kenner and the Kenner investors...on the \$68.9mm cash-owned property at the time of the unnecessary loan.

See R33 056a - DDM 68.9mm Appraisal 4-1-05

- Please note that the KSI \$3mm loan was funded only 4 days after Jowdy's second theft (*February 17, 2006 -- of \$140,000 after the \$290,000 theft = \$430,000 total cash theft*) from the First Source Bank airplane loan personally guaranteed by Gonchar and Kenner.
- Diamanté del Mar – \$500,000 2004 loan from Norstrom (*and mailed a repayment check but never funded the payment – in the EDNY evidence*),
See R33 020 -- \$500,000 Jowdy 2004 theft of Norstrom loan
- Diamanté del Mar -- \$100,000 check paid with diverted (*Baja Development Corp*) investor funds with Najam's assistance and an actual letter to Hudson United Bank to explain the diversion protocol.
See R33 021 -- Najam letter to Hudson Bank for 100k money laundering.png
- Diamanté Cabo – \$2.5mm Jowdy capital account – stolen from Hawai'i loans et. al.,
See R33 057 -- Diamante Cabo -- Operating Agreement (Page 37 capital accounts)

BRADY for Rule 33

- Diamanté Cabo – \$500,000 diverted from Glen Murray loan in NV (*adjudicated in Murray's and Kenner's favor*) which Jowdy and Thalmann in 2009 accounted for as loans from Jowdy (*Baja Development Corp*) to Propiedades DDM (*Mexico*) (*Jowdy's 99%, Garcia 1% owned México company*) and submitted as evidence in the Jowdy Nevada case,
See R33 015 -- NV ruling in Murray v Jowdy
- Diamanté Cabo – \$100,000 diverted from Owen Nolan's investment in Cabo thru Baja Development Corp,
See R33 022 -- Baja Development Corp -- August 2006 statement
- Las Vegas residence – \$412,000 diverted from Glen Murray loan in NV (*adjudicated in Murray's and Kenner's favor*) which Jowdy and Thalmann in 2009 accounted for as loans from Jowdy (*Baja Development Corp*) to Jowdy and Thalmann's NV House and submitted as evidence in the Jowdy Nevada case,
See R33 015 -- NV ruling in Murray v Jowdy
- Diamanté Air planes – over \$1,500,000 from Gonchar, Kenner, Gaudet, Sydor, Stumpel, and Norstrom,
See R33 049 -- Jowdy Diamanté Air plane multi-million dollar thefts
- Diamanté Air planes – about \$430,000 from Gonchar and Kenner from \$1.1mm loan guarantees fraud with First Source Bank,
See R33 049 -- Jowdy Diamanté Air plane multi-million dollar thefts
- Jowdy personal – about \$1,600,000 from Stumpel loan to Jowdy in México,
See R33 017 -- Stumpel 1.6mm loan to Jowdy
See R33 018 -- Jowdy confirms \$1.6mm UNPAID Stumpel loan
- Jowdy personal – about \$125,000 from Gaudet loan to Jowdy in México,
Lawsuit filed in México by Gaudet (several times -- like Kenner) and derailed by Jowdy payoffs.

See R33 566a -- Gaudet July 2, 2009 -- AZ deposition (page 6-7)
- Cabo Airport – about \$1.1mm investment funds from Kenner and Norstrom stolen thru Jowdy's México company LOR Management,
See R33 016 -- Jowdy \$1.07mm CSL Airport theft -- January 2010 deposition
See R33 019 -- Jowdy THEFT of Norstrom \$400k CSL Airport investment
- Diamanté Cabo golf villas attempted embezzlement – about \$600,000 from Nash and Gonchar thru the "LOCK BOX" escrow account created by Diamante Cabo and Lehman Brothers to hold golf villa home deposits until closings.

BRADY for Rule 33

See R33 028 -- CABO SAN LUCAS Golf Villa deposit THEFTS by Jowdy (2006)

Despite all of these Jowdy thefts – the government at the EDNY trial claimed Kenner and Constantine were “**fabricating**” the Jowdy thefts in order to divert attention away from crimes the government was alleging – from Komatireddy’s opening remarks, throughout the bowels of the prosecution and concluded by both Komatireddy and Michiewicz – mocking the defense’s real evidence.

See R33 029 -- Komatireddy opening statements re – Jowdy theft LIES

See R33 003 – Komatireddy calls Jowdy loan “supposed”

See R33 004 – Michiewicz calls Jowdy loan a “bogus loan”

From the date in July 2009 when Jowdy and his attorney team were notified of the EDNY Grand Jury and SEC investigations – the intimidating and cartel-like behavior from Jowdy’s defense team revived their collective efforts against any person adverse to Jowdy.

About nine (9) months after the Kenner SDNY Grand Jury began (*August 2009*) and during a trip to testify against Jowdy in another criminal proceeding in front of the State Supreme Court in México -- **Kenner was arrested and detained** while passing thru immigration into México.

- The arrest was based on a formal written complaint thru PGR (*the México version of Homeland Security*) by Jowdy’s USA and México attorneys (*led by Freeh and Harvey*) as well as CA Attorney, Michael Meeks of Pepper Hamilton (*representing Nolan, Juneau, Moreau and Kenner’s former assistant, Myrick*) – for **Gun Trafficking Charges**.
- Kenner was held for three (3) days in a solitary confinement, dry cell without food and without amenities (*toilet, sink, bed, pillow, sheets, etcetera*), and endured severe physical harm and torture from the prison officers until Kenner’s attorney, Ruben Palos, arranged for Kenner’s release thru his México City District Federal (“DF”) contacts. The Kenner “*amparo*” (*a federal legal document guaranteeing Kenner’s release from the México jail*) was Palos’ first publicly known appearance in México versus Jowdy.
 - ***Kenner’s attorney, Palos, was murdered (shot in the back of the head) in México shortly after the Kenner release from the México prison.***

Please note that that the post-trial disclosure of **Forfeiture-44** was merely the last straw of the government’s pompous approach to Kenner’s prosecution (*not counting the subsequent Jowdy “co-conspirator” language*), since they already had the following evidence confirming the loans to Jowdy and EVERYONE’S knowledge of the various loans –

1. The 2008 Nevada litigation – Glen Murray v. Jowdy for \$791,000 in unpaid loans (*adjudicated in Murray and Kenner’s favor in a 4-day bench trial – December 2010*),
See R33 015 -- NV ruling in Murray v Jowdy

BRADY for Rule 33

2. The May 2009 arbitration -- Kaiser testimony confirming the loans to Jowdy,
See R33 031 -- Kaiser 2009 testimony in the Nolan Arbitration
3. The May 2009 arbitration -- Berard testimony confirming the loans to Jowdy,
See R33 033 -- Berard contradictory testimony about the Jowdy loans
4. The May 2009 arbitration -- Kenner testimony confirming the loans to Jowdy,
5. The May 2009 arbitration -- Constantine testimony confirming the loans to Jowdy,
See R33 051 -- Constantine testimony re- Jowdy loans -- Nolan Arbitration Transcript Day 5
6. ***The July 2007 email evidence between Constantine and Jowdy confirming the loans to Jowdy during the arbitration in May 2009,***
See R33 034 -- Jowdy-Constantine confirm \$8.5mm PLUS in debt to Kenner
7. The May 2009 Norstrom affidavit confirming the loans to Jowdy,
See R33 035 -- 3500-MN-2-Norstrom affidavits
8. The May 2009 Stumpel affidavit confirming the loans to Jowdy,
See R33 036 -- Stumpel affidavit
9. The May 2009 Gonchar affidavit confirming the loans to Jowdy,
See R33 037 -- 3500-SG-4-Gonchar affidavits
10. The May 2009 Lehtinen affidavit confirming the loans to Jowdy,
11. The May 2009 Michael Peca affidavit confirming the loans to Jowdy,
12. The May 2009 Murray affidavit confirming the loans to Jowdy,
13. The September 2009, seventeen (17) signed Baker disclosures by Little Isle 4 members confirming the litigation v. Jowdy for the unpaid Jowdy loans,
See R33 A -- Baker Little Isle 4 Disclosure letters
14. ***Jowdy's January 2010 deposition confessions of the loans (including the Kenner, Kaiser and Constantine texts during the depositions related to the loan confessions),***
See R33 038 -- Kaiser EDNY denials and January 2010 Jowdy deposition confirms of loans

See R33 040 -- Jowdy confirms loans to Baja Development Corp from Hawai'i and repayments
15. The Gonchar February 2010 proffer confirming the loans (from Jowdy's admission to him),
See R33 013 -- Gonchar February 2009 FBI proffer

BRADY for Rule 33

16. ***The Jowdy March 2010 proffer confirming the loans (in Jowdy's admission to Galioto and the other DOJ officials – with Freeh present),***

See R33 024 -- Jowdy March 2010 FBI proffer

17. The Kaiser October 2010 proffer confirming the loans,

See R33 046 -- Kaiser knowledge regarding the loan agreement with Jowdy

18. ***Jowdy's December 2010 authentication and utilization of the 2004 Hawai'i loan agreement as his defense in the Nevada trial,***

See R33 011 – Gaudet testimony in Nevada case Murray v. Jowdy (December 2010)

19. Etcetera...

Despite the above evidence and clear Jowdy confessions pre-trial (in January and March 2010) – HOW COULD THE GOVERNMENT PREJUDICE Kenner with any of the FAKE and BOGUS LOAN proffers 5 years later?

In addition and knowing that Jowdy had serious civil and criminal liabilities in front of him after Kenner confronted Jowdy and Najam's embezzlements and thefts in spring 2007 – Jowdy and his attorneys first responsive efforts were an attempt to **BRIBE** Kenner in spring 2007 to "just go along with Jowdy" against the Kenner investors.

Kenner **REFUSED** and initiated his legal pursuit of Jowdy in the USA and México. Jowdy brashly confirmed the BRIBES in his January 2010 deposition in CA – which was forwarded to Galioto in February 2010.

See R33 039 -- Jowdy confirms BRIBE to Kenner in 2007

In fact – the government was also aware that Jowdy LIED in his April 2009 Nevada deposition in the Glen Murray v. Jowdy case that he had "**NO LOANS**" (*in his April 2009 version of the truth led by Tom Harvey to deny, deny, and deny – one month before his Nolan arbitration testimony*) with any Kenner entity or personally.

This was the same pre-FBI proffer LIES Jowdy (*and Diamanté CFO -- Bill Najam*) told about the "**loans**" from Hawai'i, Kenner and other Kenner investors as in the Nolan arbitration.

See R33 043 -- Nevada – April 2009 deposition of Jowdy

See R33 047 -- 2009 Nolan Arbitration -- Najam LIES about loans to Jowdy

See R33 048 -- In Nolan 2009 arbitration -- Jowdy claims all Hawai'i money are investments

- *These are the same funds that Jowdy confirmed as "loans" in his January 2010 deposition and March 2010 proffer to FBI Agent Galioto and others...once the Hawai'i case versus Jowdy for the \$5mm+ in UNPAID loans was dismissed...*

BRADY for Rule 33

Now – despite Jowdy’s self-serving and PERJURED testimony about “***no loans***” in April 2009 in the Nevada case (*and May 2009 at the Nolan arbitration with Najam*) – Jowdy and Harvey turned over the DDM Balance Sheet in January 2010 with the following funds owed to Kenner in the CA case – which was distributed to Kaiser, Berard and all of the México and Hawai’i investors in January 2010.

See R33 042 -- Jowdy Mexico payables to Kenner

None of these totals include the original money from Kenner’s \$350,000 “cash” that was given to Jowdy for the DDM start-up in 2002 and 2003 &/or the \$125,000 “cash” given to Jowdy for the Diamante Air Falcon originally in 2004-05...another multi-million dollar theft by Jowdy (*also known to Galioto and the government*).

See R33 049 -- Jowdy Diamanté airplane multi-million dollar thefts

- ***R33 049a – Diamante Air Hudson United -- TD Bank Statements.pdf***
- ***R33 049b – Diamante Air FRAUD Jowdy operating agreement signed after loan docs.pdf***
- ***R33 049c – Diamante Air fraud loan docs.pdf***
- ***R33 049d -- Diamante Air loan history.pdf***
- ***R33 049e -- Jowdy theft of \$290,000.pdf***
- ***R33 049f – Diamante Air Hudson United -- TD Bank Statements.pdf***
- ***R33 049g -- Diamante Air REAL Operating agreement PRE Jowdy FRAUD***

Nonetheless – Jowdy’s own records of money from Kenner total -- \$463,562 – Which is certainly more than NONE (as his testimony claimed in April 2009)...

See R33 044 -- Jowdy México payables (from loans) due to Kenner

Despite the April 2009 NV testimony (***See R33 043***) – Jowdy’s testimony from the Nolan Arbitration in May 2009 (***See R33 048***) confirmed that Jowdy received funds from Kenner.

See R33 045 -- Jowdy confirms (with contradicting testimony) that he did receive money from Kenner

Each of the 19 CA Plaintiffs (***plus Kaiser & Galioto – see R33 058***) received a disc from Kenner with the 2-day January 2010 deposition and all of the discovery released by Jowdy in the CA case – THUS – all of the investors, Kaiser and Galioto were aware that Jowdy had released these accounting records during the CA case including the acknowledgement of the loans to DDM from Hawai’i – (***also Kenner forfeiture EXHIBIT F-28***)...

This was certainly independent knowledge of the Jowdy thefts – despite repeated EDNY witness testimony about no independent knowledge of Jowdy crimes...

See R33 041 -- DDM Balance Sheet with Little Isle 4 & Ula Makika loans

- ***Please note that Jowdy prepared this Balance Sheet – acknowledging the loans from Kenner and the two Hawai’i entities (Little Isle 4 and Ula Makika) while his AZ “NO LOANS” defense was still active – further defrauding the AZ courts, Kenner and his UNPAID Hawai’i lenders.***

BRADY for Rule 33

- ❖ ***Perhaps – consistent with each of the government’s witnesses -- they received all of the evidence but did not view/read them...***

It is simply implausible that any minimal level of ethics was employed in the government’s prosecution case thus restraining them from claiming Kenner (&/or *Constantine*) were misleading or disingenuous to the Kenner investors about Jowdy stealing investment and loaned funds.

BRADY for Rule 33

Frailes contracts with fabricated agreements by Kaiser --

- ***Privitello (with signatures),***
- ***Smith, and***
- ***Sconzo***

- ***BRADY and Rule 33 issues...***

Although the Court instructed the jury that the Frailes investment was not part of the alleged and charged offenses during the trial – the Los Frailes project was mentioned forty-eight (48) times throughout the trial inviting claims that the alleged victims had resulting losses as a result of the defendants' actions.

The government turned over a significant amount of documents, post trial, which they ***received pre-trial***, based on the ***FAX TIME STAMPS*** on the documents.

- These ***BRADY MATERIAL*** items would have proven extremely helpful for the defense, specifically since a few of the EDNY alleged victims provided documents that confirm ***Kaiser had fabricated other agreements*** and signatures to defraud his investor/friends –
 - ***Nick Privitello (a EDNY witness),***
 - ***John Smith (an alleged post-trial victim – see R33 001a -- FORF-1), and***
 - ***Frank Sconzo (an alleged post-trial victim – see R33 001a -- FORF-1), and others.***

Kaiser fraudulently fabricated and signed documents for his investors that claimed he, *individually*, was the Managing Member of an México investment entity (*just like the fake LedBetter operating agreement used to steal and sell the Kenner-controlled LedBetter LLC in 2011 by himself and Berard*).

These forged and fabricated documents would have been priceless to ***IMPEACH Kaiser*** at trial – *specifically related to forgeries* – as well as statements made by Privitello – clearly contrived by Kaiser and Privitello during successive phone interviews with the FBI on ***October 2, 2014!***

- ***The government (and the FBI) do not have the right to determine which exculpatory evidence is relevant to the defense's case theories – thus they are not allowed – under BRADY – to selectively turn over documents.***

***This is a CLEAR BRADY VIOLATION of Kenner's rights to a fair trial
-- Under the 5th amendment.***

In this case in particular – the government brought an expert to testify and allege that “***someone***” had FORGED Kaiser's signature – ***implying Kenner or Constantine did it.***

With the ***FRAUDULENT*** Los Frailes contracts – Kenner's defense would have been able to call Los Frailes partner Robert Gaudet to testify that Kaiser had in fact forged and fabricated the documents – unknown to both Kenner and Gaudet.

BRADY for Rule 33

Gaudet's testimony plus the newly discovered Kaiser and Berard losing FORGERY claims in their AZ case defense in 2015 (*to Kenner, Sydor, Ranford, Nash, Khristich and Lehtinen*) would have clearly outlined Kaiser's habitual claims and misrepresentations about the FORGED 2004 and 2005 Constantine consulting agreements – *but suspiciously not the 2006 Constantine Hawai'i consulting agreement.*

See R33 055e -- AZ ruling -- Kenner v Kaiser

- **Please note that NO documents were ever delivered to Kenner from Privitello, Smith &/or Sconzo despite Kenner's documented requests.**

See R33 100 -- Kenner requests Frailes information from Privitello – January 2012

See R33 106 -- 3500-FS-1

Privitello and Smith both signed and notarized documents identical to Kaiser's October 2008 notarized agreement with Kenner (*in Galioto's possession*) – *but never turned over from the government, Privitello &/or Smith.*

See R33 101 -- Los Frailes-Kaiser 500k notarized Agmt.tiff

- Please note that that this \$500,000 investment by Kaiser with Kenner in October 2008 (*above*) was fraudulently claimed in Kaiser and Berard's AZ defense case as an additional \$500,000 investment in the AZ project. Galioto was deftly aware of the fraudulent misrepresentations to the AZ court via email.

See R33 102 -- Galioto & Kaiser email re-- \$500k Frailes investment

Kenner requested a copy of the document from Privitello (*via Skype*) and Smith (*phone only communication*). These important documents (*representing a \$250,000 for Privitello and \$100,000 for Smith were investments made SOLELY thru Kaiser*) were never turned over to Kenner despite the 2012 requests.

Instead – only post-trial and in the government's forfeiture disclosures (BRADY &/or Rule 33 issues) – Privitello and the government produced a ***FABRICATED and FAKE*** document that was signed by both Kaiser (*fraudulently as the Managing Member of a México entity*) and Privitello.

See R33 103 -- victim - Nick Privitello (page 12)

The agreement was signed and exchanged via fax between Kaiser and Privitello over a year after the funds were sent to Kenner – Kenner is not aware of how &/or why Kaiser presented a México document claiming he was the Managing Member of Kenner's entity – more FRAUDS by Kaiser.

See R33 104 -- 3500-NP-5

BRADY for Rule 33

Amazingly – despite Privitello &/or Kaiser turning this fake and fabricated document over to the government which both Kaiser and Privitello countersigned – Privitello told the FBI on October 2, 2014 in proffer that Kaiser told Kenner to “**stop dragging his feet with the paperwork**”.

10. When Privitello invested, he did not receive paperwork regarding his investment. Kaiser told KENNER “to stop dragging his feet” and get Privitello and a co-worker of Privitello's Jonathan Smith (another investor in Frailes) paperwork. That's when Privitello received the membership agreement for Frailes.

- This information would have been priceless to cross-examine Privitello considering Kenner did not know Privitello at the time of his México investment (*January 2008*). ***It was 100% handled thru Kaiser.*** If Privitello needed Kaiser's help to get Kenner “**to stop dragging his feet**” ...then why did Kaiser sign the agreement -- and not Kenner?
 - *This was another unchecked and perpetuated fraud by the government, Kaiser and Privitello.*

Agents Galioto and Wayne spoke with Smith the next day (**October 3, 2014**) and received the newly fabricated story by Kaiser and Privitello from the previous day's interviews.

- *This was another identical unchecked and perpetuated fraud by the government.*

Please note that that the only documents that were turned over by the government (*unsigned*) for John Smith's investment in México (*thru Kaiser in early 2008 – when Smith was not known to Kenner*) had Kaiser – also – *as the Managing Member* – yet another fraud.

See R33 105 -- victim - John Smith (page 11 et. al.)

Per Dr. Frank Sconzo's proffer to the FBI – also despite Kenner's requests for any documents in 2013 -- the only documents that Sconzo &/or Kaiser turned over were ***forged and fabricated México documents with Kaiser again as the Managing Member of an entity that he was never a Managing Member of.***

See R33 106 -- 3500-FS-1

In fact – two (2) checks were deposited into Kaiser's personal bank account (*only turned over post trial – thus another BRADY &/or Rule 33 issue*) for \$190,000 and \$10,000 – both endorsed by Kaiser.

These are the full \$200,000 Sconzo told the FBI that he gave to Kaiser – not Kenner –

BRADY for Rule 33

2. Sconzo invested in the Frailes property with Willie Krueger and Robert Gargano. Frailes is a property located in Mexico. Sconzo believed Kreuger invested \$100,000 and Gargano invested \$50,000. Krueger and Gargano sent checks to Sconzo. Sconzo believed he invested \$50,000 in Frailes property. Sconzo sent \$200,000 to Kaiser for Kruegers, Gargano and his investment in Frailes. The investment was sent to Kaiser by check. Sconzo thinks it was more than one check that was sent for the \$200,000. Sconzo was uncertain if a total of \$200,000 was sent to Kaiser, he stated he would check his records and get back to the agents.

4. For the Frailes investment Sconzo received paperwork from Kaiser.

7. Sconzo only sent money to Kaiser for the Frailes property and the loan for the Palms unit.

In Sconzo's own words -- no business was done between Kenner and Sconzo.

5. Sconzo met PHILLIP KENNER (KENNER) once. Sconzo spoke to KENNER once on the phone. KENNER asked that Sconzo send KENNER his documentation for his investment in Frailes. Sconzo could not recall the specific documentation that KENNER was asking for. KENNER told Sconzo he was going to help Sconzo get back his money. Sconzo never provided the documentation to KENNER. KENNER called Sconzo once more but Sconzo never spoke to KENNER and didn't return his phone call.

Kenner learned of the Sconzo issues after Berard and Kaiser began terrorizing Gaudet in México in 2012 with the help of Jowdy's México thugs (*listen to Berard, Kaiser and Gaudet secret recordings*) while working with Galioto...

TRACK 8 (@ 20:30) – Kaiser tells Gaudet – ***“we are looking at you”***

TRACK 8 (@ 37:00) – Kaiser tells Gaudet – ***“you got a lot of thinking to do”***

TRACK 6 (@ 6:55) – Kaiser tells Gaudet – ***“there are a few ways this can go”***

TRACK 6 [23:08] (@ 0:00) – Gaudet tells Berard – ***“investigators from México went to his house to harass him about Kaiser's signatures on México testimonial”***

After Gaudet tells Berard that he has been followed in México and intimidated –

TRACK 6 [23:08] (@ 8:40) – Berard tells Gaudet -- ***“FORGERIES are very serious in México”*** ...



BRADY for Rule 33

Gaudet went on to explain exactly what they all did together in the prosecutor's office the day **they all signed the alleged forged documents** and then – **STUNNINGLY** –

Berard went on to admit to Gaudet that he and Kaiser signed "**BLANK DOCUMENTS**" in México before they left the prosecutors office to fill in their testimonials.



@ 9:40 – Berard states – ***We did not make testimonies, we waited outside forever, it took too long, we actually signed FAKE, not FAKE, uhh, we signed BLANK PIECES OF PAPER, with our signatures...***

- *Kenner was not in México when they signed with Gaudet present at the prosecutor's office with their México attorney, Barreras.*
- *Nonetheless – the government in 2014 presented the Kaiser México document to the EDNY pre-trial as another alleged forgery...*

How did Kaiser and Berard claim their signatures were FORGERIES if they SIGNED BLANK DOCUMENTS and admitted to it?

- Please note that the government originally turned over four (4) documents in pre-trial that they claimed were **FORGERIES** (*one of which was the Kaiser document from México – admitted to be a signed BLANK DOCUMENT by Berard - above*)

This was more of the malicious and premeditated LIES by Jowdy, Kaiser and Berard to disrupt Kenner and Kenner's investor's efforts in México to seek justice despite the interminable Jowdy threats (*now with Kaiser and Berard acting as Jowdy henchmen – on salary*)...

- Please note that Wayne and Galimoto (*in Cabo san Lucas*) never asked Gaudet in their April 2014 in-person interview (*with special agent Drake -- as well*) – **OR AT ANY OTHER TIME** – if Gaudet signed the Jowdy 2004 Hawai'i loan agreement as a witness; **NEVER!**
- This is despite the fact that the government also in pre-trial told the EDNY Court that the 2004 Hawai'i loan agreement was FORGED...***when they knew Jowdy authenticated the 2004 Hawai'i loan agreement for his defense in the December 2010 Nevada trial about another \$1mm STOLEN by Jowdy.***

See R33 011 – Gaudet testimony in Nevada case Murray v. Jowdy (December 2010)

In Pretrial (*faxed by Sconzo 3-20-2014*) – the government received the two checks from Sconzo to Kaiser – unknown to Kenner &/or Gaudet, the initial Managing Member of the Frailes project.

See R33 107 -- Sconzo Fax cover sheet and 2 checks to Kaiser for Frailes

BRADY for Rule 33

On **Government-FORFEITURE-1** (see **R33 001a -- FORF-1**) – Sconzo is claimed to be a victim of Kenner's from a **non-descript \$120,000 deposit on FORFEITURE-24** (See **R33 001b -- FORF 24**) over a month after Kaiser cashed the checks from Sconzo.

- If Sconzo actually invested \$200,000 in Los Frailes – why did Kaiser receive any of it?
- And – why is Kaiser represented as the Managing Member of an México entity on the only document that Sconzo turned over to the FBI?

See R33 108 -- Sconzo Frailes agreement with FRAUD Kaiser as Managing Member

- ***These were more forgeries, fabrications and cover-ups by Kaiser, Berard and Jowdy's people...***

Kenner – in his defense to refute the veracity of Kaiser's forgery claims -- would have called Sconzo during the EDNY trial, as well as John Smith.

The same fraudulent proffer notes between Privitello, Kaiser and the FBI would have been addressed on cross-examination of Privitello with Privitello on the witness stand using the documents that Galioto withheld.

- Please note that Willy Krueger (100% unknown to Kenner) is Sconzo's partner who told Kaiser he was going to sue Kaiser in 2011 as follows –

19	+1631235	2/17/20		
97	0308	11		
5	John	8:40:28	Read	<i>On the phone w / willy he is going to be suing me</i>
	Kaiser*	PM(UT C+0)		

- ***Kenner does not recall ever meeting Frank Sconzo or Willy Krueger in person.***
- If Kaiser had terminated communication with Kenner in 2009 (like he told the EDNY) – when the AZ property went thru planned loan modification (between Kenner, Kaiser and Berard with Wells Fargo bank) – why would Kaiser be sending Kenner a text that exposed his thefts from his friends & family (unknown to Kenner)?

BRADY for Rule 33

2012 AZ case depositions with Berard and Kaiser –

- ***In the 2012 AZ case Kenner v Kaiser and Berard (with 5 interveners – Sydor, Nash, Khristich, Lehtinen and Ranford).***

See R33 055e -- AZ ruling -- Kenner v Kaiser

Once Kenner discovered the fraudulent conveyance of title on the AZ renovation project home -- Kenner tied up the AZ renovation project subject property in Court through a clouded title action (*in Pro Se*) and a filed lis pendens on the property. Kenner forced the sale of the property and the resulting escrow (*of \$795,000*) to be held by the court until the resolution of the litigation.

Then – seven (7) days after the sale of the property and the five (5) Intervener's Promissory Notes were breached by Kaiser and Berard – Kenner arranged for AZ attorney Tom Baker to file all five (5) Intervener suits (*Nash, Sydor, Ranford, Khristich and Lehtinen – who Galioto scared into dismissing his case or face deportation with his family from the USA*) against the case resulting in over \$700,000 of settlement payments to the Interveners after trial.

Kaiser and Berard were deposed in the AZ civil case in 2014 before the EDNY trial – ***unknown to Kenner until post-EDNY trial.*** The government in Rule 16 submitted Ranford and Nash's depositions thru Rule 16 – but not Kaiser and Berard. The Kaiser and Berard depositions provided more perjury statements and exposure to their ongoing "*Jowdy-like forgery defense tactics claims*" to avoid payment of loans due to other investors.

- *It should be noted that the same attorneys in AZ represent Jowdy, Berard and Kaiser.*

From the Berard AZ deposition on October 9, 2014 (*MORE PROVABLE FORGERY FRAUDS BY Berard, Kaiser and Jowdy's cabal*) –

Page 37 –

✚ Berard claims that he did ***NOT*** give Kenner ***Power of Attorney*** to sign the closing docs in AZ

Page 39 –

✚ Berard claims that the signature on the ***Power of Attorney – Special*** document is NOT his – claims a FORGERY!

✚ Berard claims –

"I did not sign this"

Page 40 –

✚ Berard is asked if he knows Lanie M. Donlan – who was the witness on the signature – and he replies –

"YES"

Page 41 –

✚ Berard is asked two (2) times if the signature is his OR if he just doesn't remember...Berard states –

BRADY for Rule 33

"NO, I did not sign this power of attorney."

Then – Berard answers –

Q: So that notary of Mr. Medlin, your testimony would have to be that it is fictitious?

A [Berard]: YES

The classic in Berard's testimony is that the FBI could easily retrieve the NOTARY BOOK of **William Patrick Medlin**. The Berard alleged forgery included Berard's best friend (*Lanie Donlan*) as the **signed witness**.

See R33 200 -- 3500-LD-2

GALIOTO & Wayne DO NOT DO IT or simply did not produce 3500 material documenting their call to Notary Medlin – despite making a specific call to Donlan on September 9, 2014 (one month prior to Berard's erroneous AZ deposition claims) to inquire about the Power of Attorney document for the AZ case.

- Please note that this document is notarized in Suffolk County MA where Donlan lived at the time of the NOTARY STAMP and Berard was present the day of the notary (*see text messages below*)...

The agent's notes (*section #2*) claim that Donlan had the Power of Attorney document in her possession – thus – Galimoto had previously sent it to her for her review. Since Berard and Donlan speak daily – Berard was 100% aware of the signature issues one month before he lied in his October 2014 AZ deposition (*above*).

- ❖ Please note that this was a **FORGERY THEME** that Berard and Kaiser attempted to continue with Agent Galimoto's cover-up throughout their AZ civil case defense and in their EDNY testimony.
- ❖ The AZ judge saw thru Berard and Kaiser's LIES due to more underlying evidence contradicting their fabrications.

See R33 201 -- AZ ruling -- Kenner v Kaiser

During the *alleged signature and NOTARY forgery* claimed by Berard regarding his signature and EDNY government witness Lanie Donlan's signature and a **FAKE NOTARY of WILLIAM MEDLIN** in MA on April 24, 2008 – Berard **ACTUALLY** sent Kenner the following text *confirming* that Berard was in Boston (*in "Southie" with Lanie Donlan*) at the time of the document notary --

442	+1401524 6929 Bryan Berard*	4/21/2008 2:00:09 AM(UTC+0)	Read	<i>Boston is killn my liver!!!!!! Lol. U gotta come here worst is I'm even hangn in southie</i>	
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BRADY for Rule 33**See R33 201a -- Berard & Donlan notarized Power of Attorney**

Please note that Lanie Donlan is the same EDNY government witness who claimed that Kenner had FORGED (*or traced*) about 20 signatures in her presence in 2005 – after Kenner allegedly flew into Boston to do it with her at her real estate office (*which Kenner ha never been at*)...without either producing the document to the FBI which she confirmed she scanned and emailed for Kenner – or the FBI asking her to retrieve the allegedly **TRACED** (*forged*) document.

See R33 203 -- Donlan claims Kenner forgery in her presence in 2005 in Boston MA

Despite the EDNY slanderous and fabricated testimony by Donlan (*Berard's best friend*) – neither the government nor Donlan produced a single document *in any year*, not just 2005 as alleged (*in the 2mm documents turned over by the government*) with all of Kenner's clients signed on the same document...**BECAUSE IT NEVER EXISTED**.

Later that same day that Berard complains about his liver hurting from excessive drugs and alcohol use to Kenner (above) -- Kenner (**in RED**) texted Berard (*re- the need for the notarized document which Berard called a forgery for "PV" (Paradise Valley)*)--

532	+1401524 6929 Bryan Berard*	4/21/2008 6:19:35 PM(UTC+0)	Sent	Call me when free about PV	
-----	--------------------------------------	--------------------------------	------	-----------------------------------	--

Kenner sent the Power of Attorney document to Berard for a signature and NOTARY after they spoke on the phone (*email on Kenner's computer which the government NEVER turned over -- or Kenner's iPhone*) since the November 2013 search and seizure of Kenner home office.

Berard sent Kenner the following to Kenner to confirm he will get the Power of Attorney document signed on the 24th of April (*day of the signature, witness from Donlan and notarized stamp from William Medlin - ABOVE*) –

463	+1401524 6929 Bryan Berard*	4/23/2008 9:14:25 PM(UTC+0)	Rea d	I get back 2 hboston 2nite so ill get papers 2 u 2morrow so ull have friday!!! Howd u guys do n tourney??	
-----	--------------------------------------	--------------------------------	----------	---	--

In fact --- Berard inquired about using Kenner's FedEx account to send him the notarized document "**so ull have friday!!!**" – which Berard called a **FORGERY** in the AZ case –

486	+1401524	4/24/2008 7:52:38	Rea	Ok 2 use ur fed x acct # 4	
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BRADY for Rule 33

	6929 Bryan Berard*	PM(UTC+0)	d	<i>package??</i>	
582	+1401524 6929 Bryan Berard*	4/24/2008 7:52:50 PM(UTC+0)	Sent	<i>Yes</i>	
487	+1401524 6929 Bryan Berard*	4/24/2008 7:54:08 PM(UTC+0)	Read	<i>Thanks</i>	

The judge in the AZ case ruled against Berard (*see R33 201*) – even without the unambiguous Kenner text messages (*since Kenner was in EDNY detention and could not testify during the 2015 civil trial – costing Kenner about \$1mm in losses in the originally filed case*).

49. Kaiser and Berard ratified allegedly forged signatures by their signing of subsequent documents which relied upon the allegedly forged documents. Kaiser alleges that his signature was forged to exhibit 38, the Shangri-La Trust 1999. However, Kaiser then executed a number of recorded documents as the Trustee of the Shangri-La Trust 1999. Kaiser could not have done this without the Shangri-La Trust 1999 agreement and his appointment as the Trustee. Berard testified that his signature on the Power of Attorney – Special (exhibit 25) and Deed of Trust (exhibit 26) were forged. However, Berard signed a number of recorded documents as a grantor, including the Quit Claim Deed transferring the property to John R. Kaiser, Trustee of the Shangri-La Trust 1999 (exhibit 27).

50. Sydor, Ranford and Khristich had valid amounts and on the terms set forth within their respective... 8224 North Golf Drive, Paradise Valley, AZ as described. The principal and interest due on the

**Berard claimed FORGERY –
echoing the Kaiser fraudulent claims
in the AZ case and the EDNY...**

Berard and Kaiser were also ruled against for their AZ fraudulent conveyance of title (*aka...THEFT*) –

BRADY for Rule 33

57. The March 9, 2012, conveyance of the property by John R. Kaiser as Trustee of the Shangri-La Trust 1999 to "John R. Kaiser, a married man, as his sole and separate property and Bryan Berard, an unmarried man" (exhibit 29) was a fraudulent transfer. A.R.S. §44-1004(A). The Interveners are therefore entitled to avoid the transfer or obligation to the extent necessary to satisfy their claims, and to enforce the claim against the proceeds of the sale of the property without regard to any interest that Kaiser or Berard may have acquired as a result of the conveyance.

Docket Code 926 Form V000A Page 12

This is the same CRIME that Kenner sued Kaiser & Berard for in Sag Harbor (2013) after the same theft of the Kenner-controlled LLC by fabricated & FORGED docs...

Kaiser & Berard were GUILTY of a fraudulent transfer (THEFT) of the title away from Kenner – but no criminal FRAUD charges by Galioto...

If Kenner had been aware of the Berard (*Kaiser's AZ theft partner – thru a fraudulent conveyance*) deposition claims of NOTARY William Medlin's forgery with Lanie Donlan during his 2014 deposition – Kenner would have been able to confront Donlan and Berard about the alleged forgery and called NOTARY Medlin (*with his Notary book*) as a witness to prove that Berard and Donlan actually signed the document.

This is notwithstanding the Kenner texts with Berard (*above*) confirming Berard signed, notarized and sent the paperwork back to Kenner with Kenner's own FedEx account.

- **Add 2015 AZ Trail transcript LIES here**

BRADY for Rule 33

Despite the obvious FORGERIES and document FABRICATIONS by Kaiser, Berard and Jowdy's people against Kenner beginning in 2009 – they all worked hand-in-hand to help slander Kenner and prejudice any jury pool thru Jowdy's attorney's, Tom Harvey's, relationship with the NY Daily News.

After years of slanderous stories about Kenner -- The NY Daily news –***beat writer Michael O'Keefe*** (*long-term friend of Jowdy attorney, Tom Harvey*) wrote on November 13, 2013 within hours of the Kenner arrest in AZ the continuation of the Harvey and O'Keefe slander of Kenner –

...Kenner was collared working out at a gym Wednesday morning, according to one source – bringing to close a long and difficult investigation that relied largely on the determination and persistence of former Ranger and Islander Bryan Berard and former New York and Long Island police officer John Kaiser, along with New York-based FBI Agent Matt Galioto.

...said Berard, who estimates he lost at least \$3 million and maybe as much as \$6 million in forged lines of credit, worthless real estate deals...

The NY Daily News continued as follows –

The sprawling investigation includes fake investments, lavish expenses, forged signatures on lines of credit, death threats and blackmail, much of which centered around Kenner and Constantine's attempts to gain control of a Cabo san Lucas golf resort...

- ❖ ***NO forged signatures*** for LOCs were ever raised in the EDNY trial or pre-trial – despite the 2013 representations. In fact – it was Jowdy who tried in 2007 to negotiate a settlement when faced with the wrongdoings of fraud, unpaid loans and embezzlement by Kenner...and fears of federal intervention before he and Harvey hired Louis Freeh.
- ❖ NO Blackmail was alleged in the trial, nor were there any except for Harvey's threats in 2009 – which Kenner sued them for in CA for extortion.

See R33 027 -- Harvey EXTORTION THREATS to Kenner (April 2009)

- ❖ No death threats to Kaiser, Berard &/or any other alleged victim were alleged during trial...
 - Please note that only Kenner suffered multiple murder attempts, threats on his life in México, and was detained in a México prison (*in dry-cell, solitary confinement*) for ***gun trafficking*** charges pressed by Jowdy's USA and México attorneys in concert with Nolan's USA Attorney until Kenner's attorney, Ruben Palos, arranged for Kenner's release.
- ❖ ***Palos was murdered shortly after the Kenner release from the México jail once the Jowdy cabal had knowledge of Kenner's new ally and well-connected México attorney.***

BRADY for Rule 33

The NY Daily News continued as follows –

Former NYPD and Suffolk County cop and developer Kaiser, who worked tirelessly with Berard to expose Kenner, who was a onetime investment partner, with Constantine, described the devastating losses he, his brother and mother suffered at the hands of Kenner and Constantine.

- ❖ Please note that Ethel Kaiser confirmed at trial that her son, John Kaiser, paid her back all of the funds that she remembered (\$390,000) investing with Kenner in Hawai'i – plus 12% -- ***thus not a victim.***
 - Ethel Kaiser, who is a Plaintiff in the 2011 and 2014 EDNY civil cases versus Constantine, did not sue Kenner in either instance.
- ❖ The unresolved issue is that Kaiser took at least \$700,000 from his mother in August 2005 but Ethel Kaiser claimed the funds were only \$390,000 during EDNY trial, thus Kaiser stole the additional \$310,000 at the time from his own mother in 2005, and she still does not know.

See R33 052c -- Ethel Kaiser investment in Hawai'i

See R33 052a -- Kau Holding Co \$1mm Aug 2005 deposit

See R33 052b -- 3500-VT-1-r

See R33 055c - FAKE Ledbetter Operating Agreement (made by Kaiser and Berard for THEFT & SALE)

See R33 055d - Ledbetter REAL Operating Agreement (referenced by Tesoriero Dec 2014)

- ❖ In addition -- Kaiser admitted in the EDNY trial to have also received – at a minimum – the \$147,000 in 2010 from his mother, of ***which Ethel also claimed that she never loaned him.***
 - Ironically – once Kaiser received the funds into his account from his unknowing mother, Kaiser transferred \$95,000 of the ***stolen funds*** in 2010 to Berard within a few days.
- See R33 052d -- Kaiser & Berard theft from Ethel Kaiser (& MORE from Kenner)***

This one document exposes a number of serious flaws in the Kaiser EDNY testimony as follows --

First –Kaiser received \$147,000 from his mother (*admitted to in the EDNY trial*)

BRADY for Rule 33

13 Q. Did your mother ever lend you or provide to you a sum
14 in the amount of \$147,000 at any point in time?
15 A. Yes.

1160

2 Q. We can agree, sir, that after receiving on August 20,
3 2010, a wire transfer in the amount of \$147,000, you
4 transferred out \$95,000 by way of a wire transfer to Brian
5 Berard on August 23, 2010. Correct?
6 A. That's what it looks like.

1161

And second – based on Kaiser's post Indictment claims that he owned Kenner's 39% Diamanté Cabo equity due to two (2) other **FORGED and FABRICATED** documents – Kaiser would **NEVER** have been receiving another \$25,000 from Kenner (*GuideDog*) eight (8) months after the \$100mm PLUS collateral default (*which obviously never really occurred*) – notwithstanding that the \$25,000 was not the only advance (*loans*) Kaiser received from Kenner in 2010 while perpetually **BROKE**.

- Kenner personally made \$100,000 PLUS ongoing investments in Kenner and Kaiser's joint AZ renovation project as well as the myriad of 2010 advances (*loans*) to Kaiser were all after the point in time that Komatireddy insincerely told the EDNY Jury in Rebuttal Summation that Kenner was **BROKE**.
- **DECEITFULLY** on behalf of the government – "**BROKE**" is also not considering that Kenner had over \$1,400,000 in his México bank account at the time of Komatireddy's misleading claim (*in EDNY evidence*) and Kenner's \$300,000 PLUS in 2009 revenues alone from his solely owned GuideDog consulting business in the same year (*in EDNY evidence*).
 - None of these funds count the other sources of revenues that Kenner generated during the timeframe of the libelous, defamatory and vilifying statement by Komatireddy &/or the years afterwards up until the time of the November 2013 Kenner arrest.

Pro Se Point II

NEW EVIDENCE for Rule 33 – November 11, 2016

The following items were not available or not known until after the conclusion of the 2015 EDNY trial –

Table of contents –

- ***Baker Disclosure letters (2009) – page 2***
- ***Northern Trust Subpoenaed documents – page 23***

NEW EVIDENCE for Rule 33 – November 11, 2016

Baker disclosures

After the conclusion of the EDNY trial in July 2015, the originally filed 2012 AZ case (cv-2012-055576 in Maricopa County) versus Berard and Kaiser by Kenner and 5 Interveners -- Sydor, Nash, Ranford, Khristich and Lehtinen, concluded contemporaneously.

Kenner met with Constantine's attorney post-trial to discuss the options of receiving the transcripts from the trial, the Arizona ruling (*adverse to Kaiser and Berard*), as well as any other case information.

Constantine's attorney told Kenner that Berard and Kaiser were deposed in the AZ case prior to the EDNY and AZ trials – although the government only turned over the Nash and Ranford depositions (*discussed later*) in their respective 3500 materials.

During those discussions, Constantine's attorney conveyed to Kenner that AZ attorney Tom Baker also had disclosure letters signed by 17 members of Little Isle 4 (*previously unknown to Kenner*). Kenner ultimately received the Disclosure Letters post-trial thru Constantine's attorney.

Prejudiciously to Kenner – all of the Little Isle 4 members whose testimony at the EDNY denied knowledge of the loans to Jowdy from Hawai'i &/or independent knowledge of the loans through their own counsel (*Tom Baker*) PERJURED themselves.

In fact – 3 of the Little Isle 4 members (*Sydor, Nash and Khristich*) chose to use attorney Baker 4 years later to represent themselves again in another AZ litigation versus Kaiser and Berard for non-payment of loans (*just like their boss in México, Jowdy – who were all represented by the same AZ counsel*).

See R33 A -- Baker Little Isle 4 Disclosure letters

Each of the 17 signed disclosure letters were returned by the Little Isle 4 Plaintiffs individually to AZ Attorney Tom Baker who represented the Little Isle 4 members in its 2008-09 claim versus Jowdy (*after Attorney Dessaulles was threatened from the case by Jowdy's AZ counsel*) for the unpaid \$5mm+ loans still outstanding.

See R33 300 -- Lake threat letter v. Kenner and attorneys

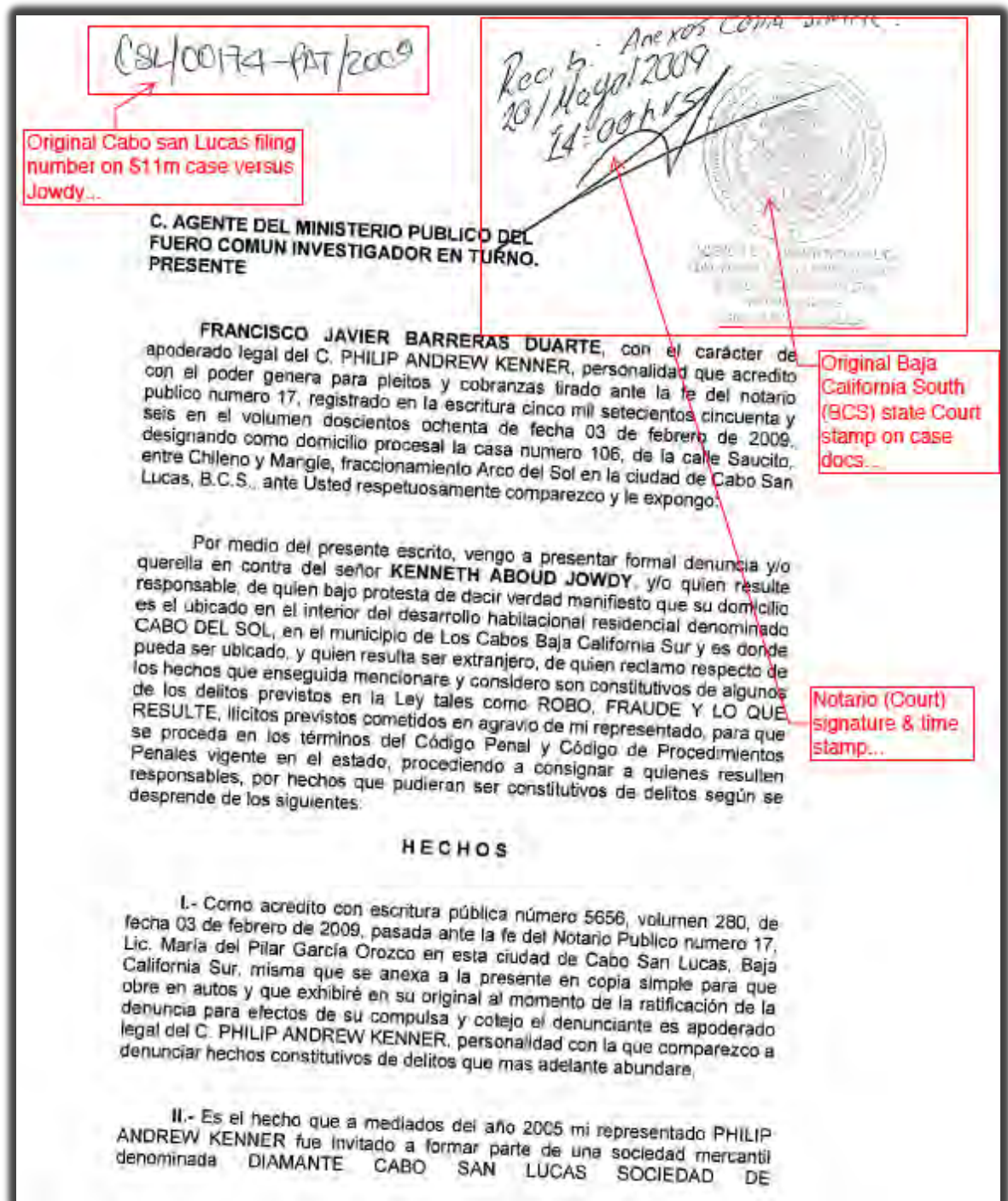
The only frauds in the AZ case were the **FORGED and FABRICATED** México Federal documents presented by Jowdy's attorneys after manipulating and altering the original Kenner filings in México (*on behalf of the Diamanté Cabo investors and lenders to Jowdy*).

Jowdy's México attorneys took the original filings from the México courts and erased the "CSL" (*Cabo san Lucas*) filing notes, the Notario's (*court clerk's*) original signature and hand-written time stamp, as well as fraudulently changing the CSL Notario Stamp on the document to Ensenada (*in a different state in México where Jowdy's main attorney resides full time*).

See R33 301 -- Jowdy FORGED notary docs from Kenner's Mexican case

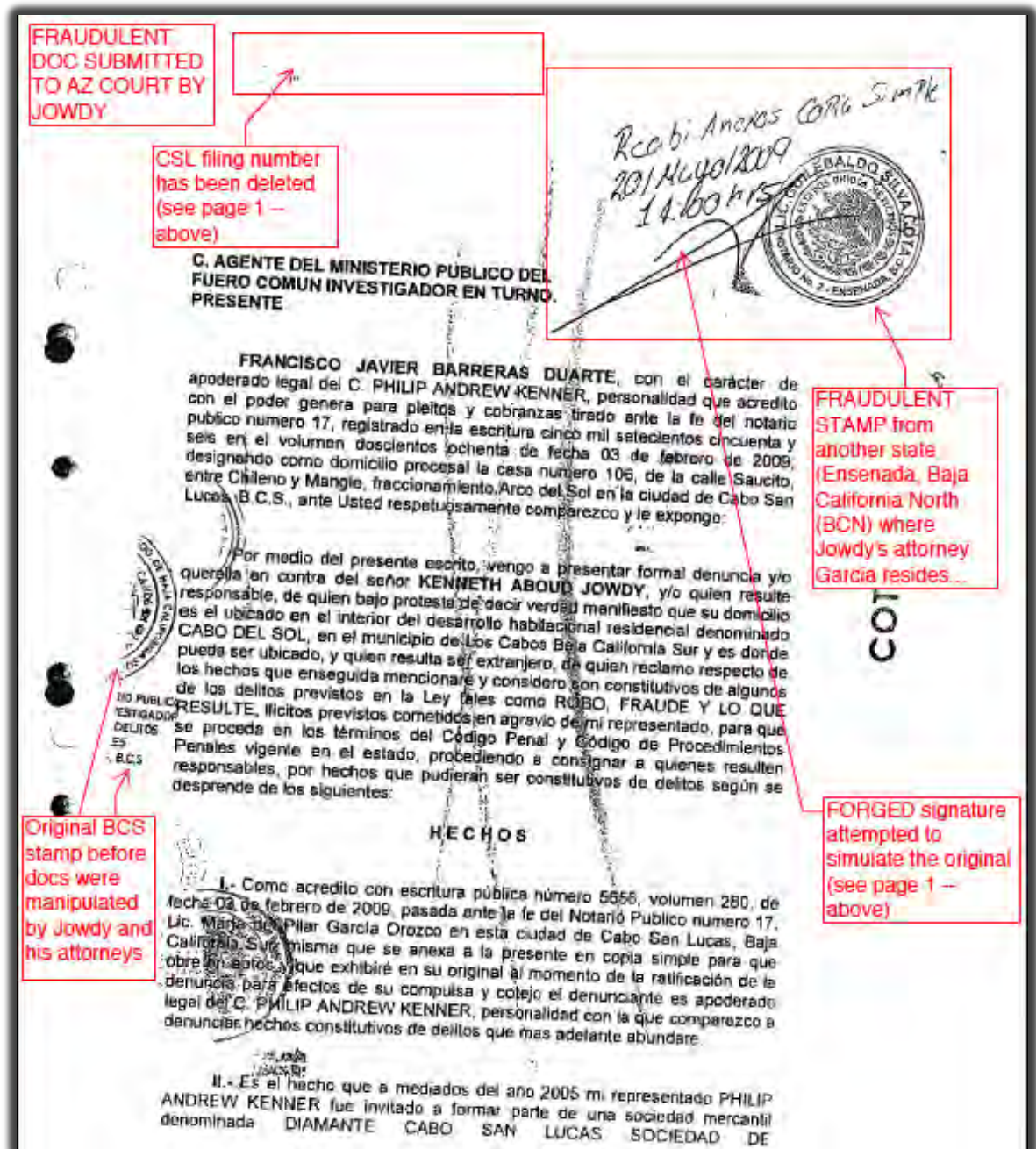
NEW EVIDENCE for Rule 33 – November 11, 2016

ORIGINAL México filing by Kenner on behalf of the \$11mm investor funds listed on the 2006 closing statement by Lehman Brothers...



FORGED and FABRICATED document by Jowdy's México and AZ attorneys and submitted in AZ Federal Court as an authentic document alleging fraud by Kenner and scaring Plaintiffs' original attorneys (Harper and Dessaulles) from the case – before Tom Baker accepted the ongoing representation of Little Isle 4 and Ula Makika versus Jowdy...

NEW EVIDENCE for Rule 33 – November 11, 2016



This fraud on the AZ Federal Court was another deliberate and deceitful action by Jowdy's attorneys to force the court into a dismissal under Jowdy's 2008-09 "**NO LOANS**" defense claims against Kenner and everyone else who loaned funds to Jowdy.

Please note that only 30 days after Kenner's last deposition in the AZ case (December 4, 2009) – and the AZ case was dismissed by the AZ Federal judge – Jowdy completely reversed his previous "**NO LOANS**" defense claims in AZ and **CONFIRMED** in California that

NEW EVIDENCE for Rule 33 – November 11, 2016

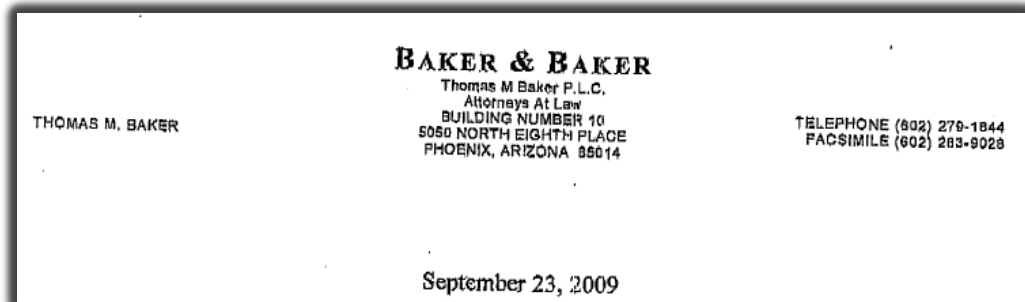
all of the money transferred to him from Hawai'i plus another \$3mm+ (*from Kenner and Kenner clients*) were now "**LOANS**" as of January 5th and 6th, 2010.

Each of the Kenner, Little Isle 4 members were notified by their attorney, Tom Baker in AZ and Ronald Richards in CA about the Jowdy reversal.

No later than September 2009 (*based on the signed disclosures*) – all of the Little Isle 4 members were aware of the loans to Jowdy and **NOT ONE COMPLAINED** about a lack of knowledge.

The disclosure letter from Baker to the Little Isle 4 members – clearly outlined the theory of the AZ case in 2009 (*loans to Jowdy*) and the defendant Jowdy's defense (*no loans*).

Each of the 17 Little Isle 4 members had direct and unabated access to their Attorney Baker.



Not one of the members called Kenner &/or Baker and demanded to understand "**what loans to Jowdy?**" – since everyone was aware from day one (*see other confirmations below*)

NEW EVIDENCE for Rule 33 – November 11, 2016

Re: **Conflict of Interest/Dual Representation Notification and Waiver**
 Little Isle IV, LLC, a Delaware Limited Liability Company;
 Ula Makika, LLC, a Delaware Limited Liability Company;
 Philip A. Kenner.
 2:09-cv-00142-PHX-SRB (US District Court, District of Arizona)

Dear Member of Little Isle IV, LLC:

You are listed as a member in Little Isle IV, LLC, a Delaware Limited Liability Company. As you are aware, Mr. Philip Kenner has filed a lawsuit in Phoenix, Arizona against Mr. Kenneth A. Jowdy. Mr. Kenner filed this lawsuit on behalf of himself as an individual, and on behalf of Little Isle IV, LLC and Ula Makika, LLC. The case was initially filed in the Maricopa County Superior Court and subsequently removed by the Defendant to the United States District Court, District of Arizona, where it has been assigned to the Honorable Susan R. Bolton. The case number is CV09-014PHX-SRB. To date, Mr. Kenner, Little Isle IV, LLC and Ula Makika, LLC have been represented by Kevin R. Harper, HARPER LAW PLC and Jonathan A. Dessaulles, DESSAULES LAW GROUP. Mr. Jowdy is represented by Brian C. Lake and James A. Ahlers at the law firm of PERKINS COIE BROWN & BAIN P.A. The gist of the lawsuit is to recover certain monies loaned to Mr. Jowdy by Mr. Kenner, Little Isle IV, LLC and Ula Makika, LLC. Mr. Kenner estimates the total amount of monies loaned to Mr. Jowdy which have not been repaid to be approximately \$5,000,000.00. This is the estimated principal only, exclusive of any accrued interest. In summary, Mr. Jowdy denies that the monies were loans but rather characterizes them as investments. Mr. Jowdy also asserts that even if the monies were loans, the Statute of Frauds (monies loaned/credit extended without a writing in excess of \$250,000.00; A.R.S. §44-101) and/or applicable Statute of Limitation (A.R.S. §12-543) precludes their recovery. Mr. Jowdy also asserts that the promissory note at issue contains his forged signature.

The following lists are alleged EDNY victims who claimed no knowledge of the **LOANS** to Jowdy but signed the Baker disclosure in 2009 including –

1. **Michael Peca** (also confirmed his knowledge of the Jowdy loans at 2011 SDNY Grand Jury) and 2009 email – (**See R33 319 -- Peca September 2009 Jowdy loans email**)
2. **Bryan Berard** (also confirmed his knowledge of the Jowdy loans at 2009 Nolan arbitration)
3. **Darryl Sydor** (also confirmed his knowledge of the Jowdy loans at 2011 SDNY Grand Jury)
4. **Glen Murray** (also confirmed his knowledge of the Jowdy loans in 2009 affidavit)
5. **Sergei Gonchar** (also confirmed his knowledge of the Jowdy loans at 2010 FBI proffer and in 2009 affidavit)
6. **Steve Rucchin**, and
7. **Tyson Nash**

The other Little Isle 4 members who signed the disclosure (*not EDNY alleged victims at trial*) included –

1. **Brian Campbell**
2. **Dimitri Khristich**
3. **Greg deVries**

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4. **Jason Woolley**
5. **Jere Lehtinen** (Kenner's Baja Ventures 2006 partner)
6. **Jerry Glatt**
7. **Mattias Norstrom** (Jowdy's single largest victim) -- (also confirmed his knowledge of the Jowdy loans in 2009 affidavit)
8. **Raymond Murray**
9. **Turner Stevenson** (SDNY Grand Jury Kenner-supporting testimony & confirmation of loans to Jowdy discussed "**as a group**")
10. **Vladimir Tsyplakov**

The other references to the knowledge of the Jowdy loans includes –

*Peca SDNY (see **R33 202 -- 3500-MP-5**) –*

1	M. Peca 03/29/11	30
7	Q How much money did you put in Little Isle IV?	
8	A \$100,000 cash investment that was going to go	
9	towards that. Then we had lines of credit. I had one	
10	out for \$1.7 million that was going to be used at the	
11	time. Here's where a lot of the cross starts to happen.	
12	A short-term loan to Mr. Jowdy, because at the	
13	time Cabo -- we hadn't gotten the lending from Lehman	
14	Brothers yet. We made a short-term loan until the	
15	lending came in. Once the lending came through they	
16	were to pay back the loan, I think in the neighborhood	
17	of five-and-a-half million dollars, on the closing. It	
18	was never paid back. And then communication basically	
19	seized at that point from him.	
20	That was kind of the whole sticking point as	
21	far as me and the other guys with Mr. Jowdy.	

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22	Q	I think we'll need to slow down and walk
23		through that in more detail, because I'm a little
24		confused.
25		This \$1.7 million line of credit that was for
26		the Mexican project or Little Isle IV?

1	M. Peca	03/29/11	31
2	A	It was for -- you're right, we're ahead.	
3		The 1.7 along with the \$100,000 and whatever	
4		else put in this a Capital account, Little Isle IV I	
5		believe. That Capital account was loaned to Ken Jowdy,	
6		our business partner, so there is no need at the time to	
7		be worried about anything. That money was loaned to Ken	
8		Jowdy to basically help some of the purchase of the Cabo	
9		property so we can get the funding. And then it was	
10		supposed to a short-term loan.	

Sydor SDNY testimony (see R33 302 -- 3500-DS-2) --

23	Q	Did you know in advance that it was going to be
24		used, this Little Isle IV money, to be used to salvage
25		the Cabo investment?
26	A	Yes. It was to help with the short-term loan

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1	D. Sydor 03/29/11	26
2	to keep funding the Cabo, then it was supposed to be	
3	paid back, but that's --	
4	Q Paid back to you or back to Little Isle IV?	
5	A Paid back to Little Isle IV.	
6	Q So --	
7	A Back to Hawaii, not to me personally.	
8	Q But that didn't happen?	
9	A That didn't happen. And Lehman came up with	
10	\$129 million loan. It was supposed to be back at	
11	closing.	

Sydor clearly established to the SDNY – “Back to Hawaii, not me personally”.

Sydor clearly acknowledges that the repayment of funds were NOT to go to him personally (above) but back to Little Isle 4 (**the lender and owner of the funds**) pursuant to the Sydor Letter of Authorization (**see R33 304 -- NT 2004 Letter of Authorization for LI4 - Sydor**) and the 2004 Little Isle 4 Operating agreement (**see R33 303 -- 2004 Little Isle 4 By-Laws-PKHOME-00011897**).

The government throughout the EDNY trial grossly misrepresented this issue – further prejudicing Kenner and the underlying ownership and responsibility of the funds.

Kenner did not owe the duty of any further disclosure of the individual funds that originated from an individual's LOC, transferred to Little Isle 4 and the subsequently used for “**authorized**” uses by Little Isle 4. The members of Little Isle 4 (*all of them*) were entitled to review the bank records and any other transactional records of the LLC at any time.

In fact – Kaiser confirmed to the FBI in his October 19, 2010 proffer that he knew the **loan to Jowdy was \$5-6mm** and that had **seen the Hawai'i bank statements** as follows –

BSM-6M - (KJ) borrowed / rec'd / loaned
- borrowed from Hawaii project - to Mexico

(KJ) - did see Hawaii bank acct statements

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Gonchar, Norstrom, Glen Murray, Michael Peca, Lehtinen, and Stumpel all confirmed in their 2009 affidavits in the Nolan arbitration that -- "***Phil has always disclosed the complete and detailed use of these funds with me from time to time and per my every request***".

See R33 305 -- Stumpel affidavit

I was aware that my funds would be used to make

distributions for the company, including but not limited to; Land Acquisition, Travel & Entertainment expenses, Legal Fees, Planning Fees, Payroll, Permitting fees, Loans to outside entities and **distributions to other members that would satisfy their monthly Line of Credit payments to Northern Trust Bank**. I also understood Phil was the sole signatory on the Little Isle IV, LLC bank account. I have never had any reservations or issues regarding the use of these funds. Phil Kenner has always disclosed the complete and detailed use of these funds with me from time to time and per my every request. We

Stevenson SDNY (see R33 306 -- 3500-TS-1) –

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7 BY MR. DEVLIN-BROWN:

8 Q The Hawaii project is called Little Isle IV; is
9 that right?

10 A If that's the name they use, I just call it
11 Hawaii.

12 Q When you put up the \$100,000 for Hawaii, did
13 you have any understanding of whether the money could be
14 used to pay for the Mexico project or was it just
15 supposed to go to the Hawaii project?

16 A In the beginning it was supposed to go to
17 Hawaii. Then I saw they needed, the group of us got
18 together, we have this piece of land that's available
19 for purchase in Mexico that we need too wait on or get
20 funds on to transfer as a group like one big blanket to
21 get money into Cabo and pay for that land to hold it
22 until the loan came.

23 Q So are you saying you agreed to transfer some
24 of the money from the Hawaii project to the Cabo
25 project?

26 A I would say that, yes.

1 T. Stevenson 03/29/11

18

2 Q Who made that decision?

3 A I think all of us as a group.

4 Q What do you mean "as a group", who is the
5 group?

6 A All the guys who were invested in it.

7 Q All the guys who were invested through
8 Mr. Kenner, his clients?

9 A If all of them, yeah, and other guys that were
10 invested in this; Mr. Jowdy I'm not sure.

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- Stevenson confirmed that the decision to lend funds to Jowdy was made “**as a group**”... echoing Michael Peca's SDNY Grand Jury “**group**” testimony as well.

Norstrom also confirmed in his 2009 affidavit that Jowdy had defrauded him and the rest of the Diamanté Air investors (*Sydor, Stumpel, Kenner, Gonchar*) in the Falcon 10 business controlled by Jowdy and Mark Thalmann (*Jowdy's childhood friend*) – including Kenner and Gonchar for a \$1mm plus loan due to their frauds –

8. **DIAMANTE AIR, LLC;** I am currently at odds with Ken Jowdy as a result of his gross mismanagement of an investment that I have made in his airplane company, Diamante Air, LLC. Ken Jowdy and Mark Thalmann, his childhood friend, acting as the Managers of this company, operated a Falcon 10 airplane and a Metroliner

Mattias Nor

087161884

P. 3

III. In the fall of 2008, Ken Jowdy and Mark Thalmann stopped making the monthly loan payments on the two (2) airplane loans under Diamante Air, LLC that they had been making since 2005. Phil Kenner notified me that Jowdy and Thalmann had failed to properly manage and maintain the business and had allowed our investment to become virtually worthless. As a result, this left Phil and one of our other partners, Sergei Gonchar, with over \$1,000,000 in personally guaranteed debt with the lender for these airplanes. Phil, as well as all of our other partners and I were led to believe by Jowdy, and Thalmann, that the loans for these planes were being paid down aggressively based on the representation that Jowdy's extensive usage of the planes, was generating charter revenue for the business. In fact, Jowdy and Thalmann did not reduce the loan obligation as represented in spite of their extensive use of the airplanes. After numerous requests, neither Phil, our attorney, Paul Augustine, or myself have been able to obtain the bank records, financial reports or tax records from Jowdy or Thalmann to review the status of our investment and where it all went wrong.

NEW EVIDENCE for Rule 33 – November 11, 2016

In 2009 -- **Kaiser** -- who was the Managing Member of Na'alehu Ventures 2006 since December 31, 2007 -- had unabated access to the Hawai'i banking records (as he confirmed to the FBI in October 2010 -- see above) and testified to his full knowledge in the 2009 Nolan arbitration.

It was not until 2015 in his EDNY testimony that Kaiser acquired amnesia about his 2005 Hawai'i "**friends & family**" money wired to Hawai'i and the loans to Jowdy (*notwithstanding Kaiser had been employed full-time by Jowdy since 2011 when he started working hand-in-hand with Galioto to prosecute Kenner*).

See R33 307 -- Kaiser fraudulent EDNY testimony and contradicting 2009 arbitration testimony

Kaiser sent a text to Kenner with the following lawsuit disclosure about one year after Kaiser told the EDNY that he split from Kenner --

199 75	+16312350 308 John Kaiser*	2/17/201 1 8:40:28 PM(UTC +0)	Read	<i>On the phone w / willy he is going to be suing me</i>	
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- Willy (*Krueger*) is Dr. Frank Sconzo's partner who was looking to sue Kaiser for the funds he stole from Kaiser's fake Las Vegas investment and never returned -- which Kaiser proffered to the FBI in October 2010...

See R33 314 -- Kaiser \$550,000 Las Vegas fraud on his "friends & family"

- Please note that with Kaiser under tremendous financial stress due to his multiple thefts from "**friends & family**" -- 2-months later -- Kaiser and Berard decided to steal the LedBetter LLC (*Sag Harbor property*) thru a fraudulent and forged operating agreement (*with Berard*) in April 2011

See R33 308 - FAKE Ledbetter Operating Agreement (made by Kaiser and Berard for THEFT & SALE)

In 2009 -- Berard voluntarily testified in the May 2009 Arbitration in AZ (*Nolan v. Kenner*).

See R33 310 -- 3500-BB-3

During the Arbitration --**Berard confirmed that he was 100% aware of the loans to Jowdy and his knowledge of the LOC.** Berard confirmed that he knew his funds were pledged against the LOC. Berard confirmed that the company (*Little Isle 4 -- and eventually Na'alehu Ventures 2006*) were supposed to pay the monthly LOC fees.

See R33 311 -- Berard 2009 arbitration testimony confirming his knowledge of the Jowdy loans and Little Isle 4 payments to his LOC

NEW EVIDENCE for Rule 33 – November 11, 2016

Despite Berard and other Little Isle 4 member's fully admitted knowledge before the 2015 EDNY trial -- the government claimed that when Kenner paid the LOC fees (*on behalf of the Little Isle 4 members – and Na'alehu Ventures 2006*) in 2008, Kenner committed a crime (*Ponzi scheme in **Counts 7 & 8***)...but when the government allegedly claimed that Kenner told the investors (*although not true*) that "**he**" (*not the LLC*) would make the payments it was a concealment of the truth. ***It cannot be both ways!***

- ❖ Please note that Kenner had over \$600,000 of capital invested prior to the 2006 Lehman Brothers closing (*verifiable in Hawai'i Bank records*) – and also prior to the 2008 Na'alehu Ventures 2006 capital contributions of \$267,000 spent on LOC fee expenses.
- ❖ ***Kenner had over \$850,000 in his Hawai'i capital account at that point by the time of the defaults in April 2009.***
- ❖ Kenner's total invested capital account in the Na'alehu Ventures 2006 project ***would be more than all of the LOC fees ever paid from inception of the project.***

Although Kenner was charged with two (2) wire fraud counts related to the Kenner LOC payments via loans to the Hawai'i partners thru the Little Isle 4 and Ula Makika accounts from Kenner funds – the jury only found Kenner Guilty of one of the two counts - ***which also defies logic...***

See R33 309 -- Kenner's 2008 capital contributions to Na'alehu Ventures 2006 for LOC payments

Notwithstanding all of this previous testimony in the 2009 Arbitration – the government asked Berard the following question and received a ***PERJURED*** answer without any concerns – as follows --

Q	Well, did you have an understanding as to who would have the control, but also the responsibility for use of the line of credit funds when you invested?	
A	No.	
Q	You had no understanding of that?	
	Owen M. Wicker, RPR Official Court Reporter	
	Berard - Cross/Haley	
		3100
A	No understanding, no.	

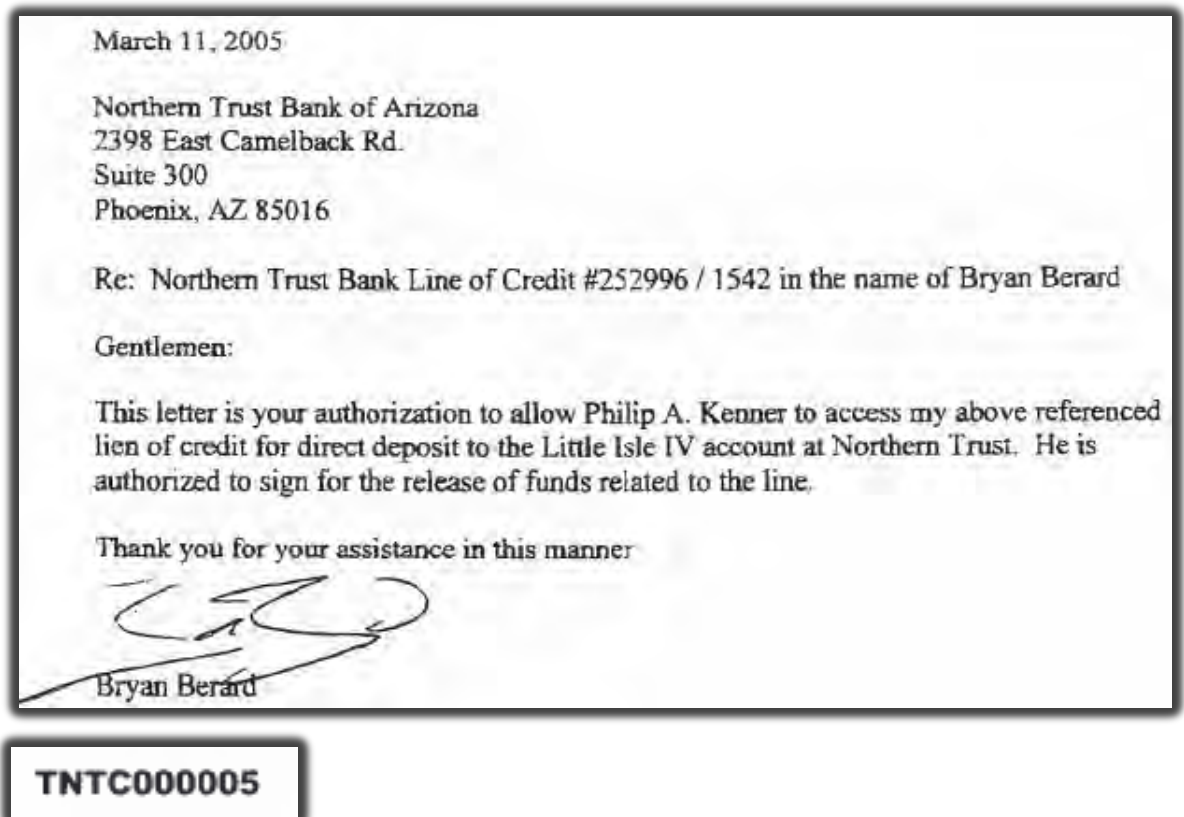
Berard – "NO UNDERSTANDING, NO."

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The government (*with Galioto*) continued on without regard for Berard's **PERJURY**...since they were aware that Berard signed a 2005 "**Letter of Authorization**" with Northern Trust Bank for his LOC – which he confirmed thru 2009 testimony (*see R33 311*).

The following authorization letter was signed – BUT – *selectively forgotten by 2015...*

See R33 312 -- NT 2005 Letter of Authorization for LI4 - Berard-2



Despite the Berard allegations in the multiple NY Daily News stories (*thru Tom Harvey's long-term friend, Michael O'Keefe – who was present at the majority of Kenner trial days*) in pre-trial of **multiple FORGERIES** (*reported by the NY Daily News as a "treasure trove"*) of **his name including FORGED Line of Credit documents**.

Neither Berard nor the government claimed that a single signature of his was a FORGERY in the EDNY trial – including this March 11, 2005 letter (*above*), which Berard signed and mailed to Northern Trust on his own – **AFTER** *his family attorneys reviewed the information (per his own 2009 arbitration testimony)* – which the government was also aware of...

Berard's authorization clearly named Kenner as the person in charge of his LOC at Northern Trust with unfettered access to transfer the funds to Little Isle 4 for the Hawai'i investment...and without further disclosure.

See R33 313 -- NT Extension of Credit \$900k - Berard-2

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Berard signed his **2005 Northern Trust Extension of Credit document** acknowledging that the funds would be used for an “**investment in speculative real estate**”. Kenner had never previously seen this document (or any other **EXTENSION OF CREDIT** documents – other than the original 2003 documents for Nolan and Juneau) until the week 9 subpoenaed documents arrived from Northern Trust.

At the EDNY – although Kaiser attempted to distance himself (thru perjured testimony) from the collective prosecution of Jowdy in the 2009-10 CA case (as the Managing Member of Na'alehu Ventures 2006) – Kaiser was present for both complete days of Jowdy's depositions.

During Jowdy's incredulous and controverting testimony January 5th and 6th, 2010 – Kenner and Kaiser exchanged the following texts confirming the **shock** of Jowdy's NEW “**LOANS**” testimony after 1 ½ years of AZ case litigation where Jowdy and his attorneys vehemently denied the existence of the LOANS (referring to them as investments) and claiming that Kenner's “**LOAN**” representations were a fraud on the AZ Federal Court – which concluded in Jowdy's attorney threats to Plaintiffs' attorney to “**leave**” the case or face consequences.

- Please note that Kaiser was the Managing Member of Na'alehu Ventures 2006 at this time (since December 2007) and present due to his active role in recovery of the Hawai'i funds from Jowdy.

114 74	+1631235 0308 John Kaiser*	1/5/201 0 6:55:19 PM(UT C+0)	Read	Why didn't the masterplan include inferstruture to villas,homesite and hotel???? All was in masterplan ??? Why waste \$\$ millions on pulling inferstruture thru finished golf course?? Gross mismanagement	
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...And Kaiser goes on to ask Kenner if we can just get the \$50 MILLION that Jowdy spent (mostly stole) back...as follows –

114 87	+16312350308 John Kaiser*	1/5/2010 8:14:05 PM(UTC+0)	Read	Your good , can u get that 50 m in small bills?	
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Please note that in the January 5, 2010 deposition – Jowdy could only confirm approximate \$13mm in expenditures after \$50mm had been drained from the Cabo budget...

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14 WHAT DID THE DESALINATION PLANT
 15 COST?
 16 **A. 5 MILLION DOLLARS.**
 17 Q. OKAY. AND THEN -- THEN AFTER THAT,
 18 WHAT WAS BUILT NEXT?
 19 **A. GOLF COURSE. WAIT. THINGS**
 20 **HAPPENED CONCURRENTLY. SO THE GOLF COURSE IS**
 21 **ROUGHLY 8 MILLION DOLLARS.**

...Which was followed by Kaiser's text to Kenner at the interview table –

11471	+16312350308 John Kaiser*	1/5/2010 6:32:34 PM(UTC+0)	Read	Unbelievable !	
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- ***Jowdy could not describe where any of the other \$37mm had gone from the Cabo budget in 4 years!***

In 2009 -- Jowdy's accountant accounted for the following "**loans**" from Hawai'i to Jowdy -- declared by Jowdy in January 2010 -- and prepared by his internal accountants in September 2009 -- while the "**NO LOANS**" defense was **ACTIVE** in the AZ case -- Hawai'i versus Jowdy...

These exhibits were turned over in January 2010 -- as soon as Jowdy was able to force the dismissal of the AZ "loans" case.

See R33 315 -- DDM Balance Sheet with Little Isle 4 & Ula Makika loans

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2:43 PM
12/03/09
Accrual Basis

DDM
Balance Sheet
All Transactions

Sep 30, 09

Loan & Exchanges

BajaDevelopmentCorp	
Baja Development Payable-2002	1,161,723.04
Baja Development Payable-2003	157,719.31
Baja Development Payable-2004	527,081.27
Baja Development Payable-2005	240,908.42
Baja Development Payable-2006	-41,366.51
Baja Development Payable-2007	267,200.28
Baja Development Payable-2008	-123,842.82
Total BajaDevelopmentCorp	2,189,322.99
Diamante Management, LLC	2,500.00
Due to Payroll or Employee	4,095.53
Guidedog, LLC	37,500.00
Legacy Properties - Payable	
Legacy Properties Payable-2007	180,904.40
Legacy Properties Payable-2008	629,908.13
Legacy Properties Payable-2009	369,500.00
Total Legacy Properties - Payable	1,180,372.53
Little Isle	795,000.00
TLI Mgmt	17,234.94
Ula Makika	50,000.00
Total Loan & Exchanges	4,278,936.99

Prepared by Jowdy's people while his AZ "NO LOANS" defense was still active -- with Kenner's 2nd depo taking place the next day (Dec 4, 2009)...

All denied by Jowdy in his 2009 NV depo, his 2009 AZ testimony for Nolan and his 2009 AZ case defense...

Loan from Kenner (GuideDog)...

Little Isle 4 loan

Ula Makika loan

Jowdy's frauds were only relevant to the Jowdy case defenses that were "active" and at the time he was forced to turn over evidence. This evidence – **which would have destroyed his AZ case defense** – was not recovered until one (1) month later when the AZ case was dismissed.

Tom Baker – the attorney for Little Isle 4 (Hawai'i) tried to enter the Jowdy January 2010 deposition confessions and accounting information (*loan confirmations*) to the AZ judge to reinstate the case as Kenner told Constantine to do during the January 2010 depositions – **but the judge refused to accept the new evidence...post dismissal.**

During the initial Jowdy declaration that the Hawai'i funds were now LOANS – Kenner sends the following texts (**Kenner texts in RED**) –

1325 8	+1631235030 8 John Kaiser*	1/5/2010 7:15:52 PM(UTC+0)	Sent	Did you just hear that? Total perjury!!!!!!!!!!!!
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..And Kaiser agrees –

11476	+16312350308 John Kaiser*	1/5/2010 7:16:19 PM(UTC+0)	Read	Yes
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...And Kenner sent to Constantine –

132 60	+1602363567 6 Tommy	1/5/2010 7:18:00 PM(UTC+0)	Sen t	All the funds from Hawaii were for loans and maybe converted to equity!!!!!! But then he said they
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NEW EVIDENCE for Rule 33 – November 11, 2016

	Constantine*			weren't converted	
--	--------------	--	--	-------------------	--

Constantine responded in SHOCK –

11478	+16023635676 Tommy Constantine*	1/5/2010 7:25:58 PM(UTC+0)	Read	So now it IS a LOAN?	
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...And Kenner sent the follow-up –

132 61	+1602363567 6 Tommy Constantine*	1/5/2010 7:26:16 PM(UTC+0)	Sen t	Baker should have his trump card now!	
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- Please note that Ronald Richards told Tom Baker about the Jowdy “***new loans disclosures***”, as well.
- Kenner, Kaiser, Woolley, and deVries informed all of the Hawai'i and México investors after the deposition that Jowdy had ***NOW CONFESSED*** to all of the Hawai'i loans (*January 5th, 2010*) – only weeks after the AZ case with his “***NO LOANS***” defense was dismissed in Jowdy's favor.
- Kenner and the investors were certain after speaking to Baker that the deposition confessions by Jowdy would be enough to submit a motion to the judge in AZ with the ***NEW CONFESSIONS*** by Jowdy and reinstate the case.
 - FBI Agent Galimoto was also notified by Kenner of the newly formed Jowdy confessions – ***but ignored.***

...And again – Jowdy calls all of the Hawai'i money loans.

Kenner texts Constantine –

1331 0	+16023635676 Tommy Constantine*	1/5/2010 11:50:18 PM(UTC+0)	Sent	LOANS!! Wholly fuck!	
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...And lastly – as a result of the Jowdy confessions during the 2-day deposition – Kenner reminds Constantine that Baker is re-filing a motion to reinstate the Jowdy case based on his new admissions of all loans -- as follows --

134 44	+1602363567 6 Tommy Constantine*	1/11/2010 1:39:35 PM(UTC+0)	Sen t	Baker needs to submit on Moreau today for you. Baker HAS TO SUBMIT on the 5mm AZ case TODAY TO REINSTATE!	
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These disclosures about the “***loans***” by Jowdy took place exactly one month after Kenner gave his second deposition day in the AZ case (*December 4, 2009*).

Jowdy's attorneys claimed to the AZ court that Kenner had not cooperated with the deposition (*although it was completed*) and that WAS why the AZ Court dismissed the case – *wrongfully*.

Despite all of this clear and convincing evidence pre-2015 EDNY trial – the government still alleged that all of the loans to Jowdy were fake and made up by Kenner – ***maliciously and grossly prejudicing Kenner at trial.***

NEW EVIDENCE for Rule 33 – November 11, 2016**Michael Peca EDNY testimony –**

During the Michael Peca EDNY testimony – the government engineered with Peca that he was not aware of the loans to Jowdy until about 2010 – although Michiewicz's first questions claimed 2011 (*the time of the Michael Peca SDNY testimony*). This is clearly a fraud on the court for a few reasons...

24	Q.	In 2011 you'll agree with me, did say that some of
25		that money was a loan to Ken Jowdy?
M. Peca - Direct/Miskiewicz		
		424
1	A.	Correct. At that point I learned that some of the
2		money was used for a loan to Ken Jowdy.

Then --

M. Peca - Direct/Miskiewicz		
		424
8	Q.	When did he tell you that?
9	A.	I couldn't tell you exactly, it started 2010 onward.

First – Michael Peca signed a disclosure (*Rule 33 -- new evidence*) for his own attorney, Tom Baker, in September 2009 clearly disclosing the basis for the 2008-09 litigation Baker just took over for Jowdy as the Little Isle 4 (*Hawai'i*) loans to Jowdy as follows –

See Baker 2008-09 AZ case disclosures -- Michael Peca

This disclosure was signed by Michael Peca was within days of Kenner's email to Michael Peca and Kristen Peca about the Jowdy frauds in the Nolan arbitration when Jowdy denied the Hawai'i loans –

See R33 319 -- Peca Sept 2009 Jowdy loans email

From the first paragraph of the letter to Michael Peca (& 17 other signors/members of Little Isle 4) –



NEW EVIDENCE for Rule 33 – November 11, 2016

James A. Ahlers at the law firm of PERKINS COIE BROWN & BAIN P.A. The gist of the lawsuit is to recover certain monies loaned to Mr. Jowdy by Mr. Kenner, Little Isle IV, LLC and Ula Makika, L.L.C. Mr. Kenner estimates the total amount of monies loaned to Mr. Jowdy which have not been repaid to be approximately \$5,000,000.00. This is the estimated principal only, exclusive of any accrued interest. In summary, Mr. Jowdy denies that the monies were loans but

Michael Peca's signature on page 8 – after Michael Peca initialed every other page of the disclosure letter from his own attorney.

See R33 A -- Baker Little Isle 4 Disclosure letters – Michael Peca letter

But – amazingly – thru RE-DIRECT – Michael Peca testified as follows –

11 Q. By the way, what if anything did that litigation that
12 Mr. LaRusso asked you about regarding Mexico have to do
13 with the millions or \$1.775 million in your line of credit
14 that you authorized for the Hawaii investment? What if
15 anything?
16 A. Nothing.

What possibly could be the reason that nineteen (19) investors sued Jowdy in AZ and in two (2) major CA lawsuits (*with Michael Peca as a Plaintiff in both*) that were all over the media and invoked a EDNY Grand Jury investigation (*although quashed by Galioto – its lead investigator – after Louis Freeh was hired by Jowdy to represent him in the ongoing investigations by the SEC and EDNY*) -- ***IF*** the lawsuits were not for the money Jowdy stole and refused to repay – as Jowdy testimony confirmed in his 2-day CA deposition in January 2010. The 2-day video depositions and transcripts were provided to Michael Peca (*and all of the Plaintiffs by Ronald Richards and Kenner by February 2010*)?

NEW EVIDENCE for Rule 33 – November 11, 2016

EDNY -- Northern Trust Bank subpoenaed records

Approximately one month before the original trial start date in April 2015 and after the government closed their Rule 16 discovery production – Kenner thru counsel -- requested a complete subpoena for all of the records Northern Trust bank held in conjunction with the LOC accounts and all of Kenner's previous joint clients with the bank including but not limited to –

- Nolan (*partially filled subpoena*),
- Peca (*partially filled subpoena*),
- Rucchin (*partially filled subpoena*),
- Sydor (*partially filled subpoena*),
- Murray (*no subpoena*),
- Norstrom (*no subpoena*),
- Berard (*no subpoena*),
- Juneau (*no subpoena*), and
- Little Isle 4 (*no subpoena*)...

The original request was denied (*with the government arguing it was a late, defense effort, fishing expedition*) and addressed again the week before the original trial date of March 23, 2015. At that time – the court issued a limited Northern Trust subpoena.

The following affidavit from Northern Trust was not fulfilled until the 15th of June 2015 – ***about 12 weeks later***. The Northern Trust materials did not arrive in the EDNY court until 2 weeks after the affidavit date.

The defective subpoena arrived just prior to the trial summations – thus not available for cross-examination of any of the government witnesses...

If the original subpoena was partially filled when requested in April 2015 – Kenner, thru counsel, would have been able to request an additional subpoena to fix the defective subpoena &/or the trial date could have been postponed if the original subpoena had not arrived before the start of the EDNY trial.

Both of these options were taken away from the defense.


NEW EVIDENCE for Rule 33 – November 11, 2016

BUSINESS RECORDS AFFIDAVIT

The undersigned ("Affiant") having first been duly sworn, deposes, and says on behalf of The Northern Trust Company, an Illinois banking corporation (the "Bank") that:

1. Affiant is a duly appointed records custodian, and is duly authorized to execute and deliver this Affidavit on behalf of the Bank.
2. The Bank produced records in the matter of *United States of America v. Philip A. Kenner, et al.*, Bates labeled TNTC000143 to TNTC000869 (the "Produced Records")
3. To the best of the knowledge of the Affiant:
 - (a) To the extent such Produced Records were prepared by the Bank, they were prepared in the ordinary course of business; and
 - (b) The Produced Records are true and correct copies of items in the Bank's records maintained in the ordinary course of business.
 - (c) To the extent such Produced Records were prepared by the Bank, they were made at or near the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of the matters.


FURTHER AFFIANT SAYETH NOT.

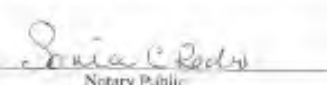

 Silvia Smith

STATE OF ARIZONA)
)SS.
 COUNTY OF MARICOPA)

Subscribed and sworn in before the undersigned, a Notary Public in and for the State of Arizona, this 15th day of June, 2015.

(Seal)




 Sonia D. Pedro
 Notary Public

Signed June 15, 2015 – 12 weeks after being issued...

In the partially filled subpoena – the following LOC clients from Northern Trust independently signed **EXTENSION OF CREDIT DOCUMENTS** – *none of which Kenner had ever seen before the arrival of the subpoena materials.*

These documents alone clearly documented their "**INVESTMENT**" in the Little Isle 4 (*Hawai'i*) project – as opposed to a short-term loan to the company – as proffered by the government and it's witnesses at trial.

NEW EVIDENCE for Rule 33 – November 11, 2016

Each of the **EXTENSION of CREDIT** documents confirmed that the funds were “**committed**” to the Little Isle 4 capital accounts for the individual investors and in the control of Little Isle 4 (thru the **Letters of Authorization** – signed by each of the LOC investors).

Nolan – \$2,200,000 investment in Little Isle 4 – 10-29-2004 --


PART I To be completed by borrower(s)

1. What is the amount of the credit being extended? \$2,200,000

2. Will any part of this credit be used to purchase or carry margin stock? ☐ Yes ☒ No


If the answer is "no", describe the specific purpose of the credit.
Investment in Little Isle IV LLC

I (We) have read this form and certify that to the best of my (our) knowledge and belief the information given is true, accurate, and complete, and that the margin stock and any other securities collateralizing this credit are authentic, genuine, unaltered, and not stolen, forged, or counterfeit.

Signed: [Signature] 10/29/04
Borrower's Signature Date
Owen Nolan
Print or Type Name

Signed: _____
Borrower's Signature Date

Print or Type Name

Berard – \$900,000 investment in speculative real estate – 3-7-2005 --


PART I To be completed by borrower(s)

1. What is the amount of the credit being extended? 900,000.00

2. Will any part of this credit be used to purchase or carry margin stock? ☐ Yes ☒ No

If the answer is "no", describe the specific purpose of the credit.
Investment in speculative real estate

I (We) have read this form and certify that to the best of my (our) knowledge and belief the information given is true, accurate, and complete, and that the margin stock and any other securities collateralizing this credit are authentic, genuine, unaltered, and not stolen, forged, or counterfeit.

Signed: [Signature] 3-7-05
Borrower's Signature Date
Bryan Berard
Print or Type Name

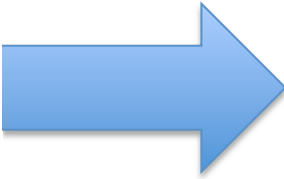
Signed: _____
Borrower's Signature Date

Print or Type Name

In fact -- Berard actually signed a previous **2003 EXTENSION OF CREDIT** (11-4-2003) document that Northern Trust left out of the subpoena (just one example of the dozens found

NEW EVIDENCE for Rule 33 – November 11, 2016

by Kenner from the search and seizure of Kenner's home office). Please note that Berard filled all of the handwritten answers out --



F.R. U-1
O.M.B. No. 7100-0115
Approval expires April 30, 2005

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
Statement of Purpose for an Extension of Credit Secured By Margin Stock
(Federal Reserve Form U-1)

NORTHERN TRUST BANK, N.A.
Name of Bank

This report is required by law (15 U.S.C. 78p and 78w; 12 CFR 221).
The Federal Reserve may not conduct or sponsor, and an organization (or a person) is not required to respond to, a collection of information unless it displays a currently valid OMB control number.
Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time to gather and maintain data in the required form and to review instructions and complete the information collection. Send comments regarding this burden estimate, including suggestions for reducing this burden, to Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0115), Washington, D.C. 20503.

INSTRUCTIONS

1. This form must be completed when a bank extends credit in excess of \$100,000 secured directly or indirectly, in whole or in part, by any margin stock.
2. The term "margin stock" is defined in Regulation U (12 CFR 221) and includes, principally: (1) stocks that are registered on a national securities exchange; (2) debt securities (bonds) that are convertible into margin stocks; (3) any over-the-counter security designated as qualified for trading in the National Market System under a designation plan approved by the Securities and Exchange Commission (NMS security); and (4) shares of most mutual funds, unless 95 per cent of the assets of the fund are continuously invested in U.S. government, agency, state, or municipal obligations.
3. Please print or type (if space is inadequate, attach separate sheet).

PART I To be completed by borrower(s)

1. What is the amount of the credit being extended? 350,000.00
2. Will any part of this credit be used to purchase or carry margin stock? ☐ Yes ☒ No
If the answer is "no", describe the specific purpose of the credit. Household Purposes

I (We) have read this form and certify that to the best of my (our) knowledge and belief the information given is true, accurate, and complete, and that the margin stock and any other securities collateralizing this credit are authentic, genuine, unaltered, and not stolen, forged, or counterfeit.

Signed: [Signature] 11-4-03
Borrower's Signature Date
Bryan Berard
Print or Type Name

Signed: _____
Borrower's Signature Date

Print or Type Name

This form should not be signed if blank.

A borrower who falsely certifies the purpose of a credit on this form or otherwise willfully or intentionally evades the provisions of Regulation U will also violate Federal Reserve Regulation X, "Borrowers of Securities Credit."

NAAZ012097

Kenner also had the following documents from Berard that were not in the 2015 subpoena from Northern Trust –

1. Berard 2003 Control Agreement-NAAZ 000613 to NAAZ 0012122

NEW EVIDENCE for Rule 33 – November 11, 2016

2. **Berard 2003 Disbursement Request & Authorization-NAAZ 000613 to NAAZ 0012122**
3. **Berard 2003 Irrevocable Stock or Bond Power-NAAZ 000613 to NAAZ 0012122**
4. **Berard 2003 Master Note-NAAZ 000613 to NAAZ 0012122**
5. **Berard 2003 Pledge Agreement-NAAZ 000613 to NAAZ 0012122**

Peca – \$1,775,000 – “Increase to existing loan used for speculative real estate investments” – 6-30-2005 --



- Thus – this the 2nd **EXTENSION OF CREDIT** document (**\$1.6mm document is also missing from the subpoena**) that Michael Peca signed with Northern Trust within the first three (3) months...and after he signed his **Letter of Authorization for Little Isle 4 and Kenner**.
- Please note that Peca signed renewal and extension documents **four (4) times in the first 365 days (available in the Northern Trust subpoena)** of the LOC that Michael Peca and Kristen Peca testimony at EDNY stated was only supposed to be a 6-month loan. If the EDNY testimony were true -- Michael Peca would not have continued to sign the LOC paperwork &/or specifically the renewals after the six (6) months, let alone for five (5) years thru 2009.
 - On the 2012 recordings with Kristen Peca – she told Kenner that she thought the LOC started when they lived in Ohio (*circa 2008-09*), thus she was not informed by her husband and Kenner’s client, Michael Peca about the truth of the LOC starting in 2005 – or not to disregard her perjured testimony that it took her one month to decide to do the LOC (*in 2005*).

NEW EVIDENCE for Rule 33 – November 11, 2016**Rucchin – \$480,000 – investment in Little Isle IV LLC – 11-24-2004 --**


PART I To be completed by borrower(s)

1. What is the amount of the credit being extended? \$480,000.00

2. Will any part of this credit be used to purchase or carry margin stock? ☐ Yes ☒ No

If the answer is "no", describe the specific purpose of the credit.
Investment in Little Isle IV LLC

I (We) have read this form and certify that to the best of my (our) knowledge and belief the information given is true, accurate, and complete, and that the margin stock and any other securities collateralizing this credit are authentic, genuine, unaltered, and not stolen, forged, or counterfeit.

Signed: [Signature] Signed: _____
 Borrower's Signature Date Borrower's Signature Date
Steven A Rucchin 11/24/04 _____
 Print or Type Name Print or Type Name

...And Rucchin signed for an increase in the Hawaii investment only a few months later (*just like Michael Peca*) after transferring more bonds and cash from his Schwab investment account to Northern Trust to cover the extended LOC –

Rucchin – \$1,000,000 -- Increase to existing loan used for speculative real estate investments – 1-3-2005 --


PART I To be completed by borrower(s)

1. What is the amount of the credit being extended? 1,000,000.00

2. Will any part of this credit be used to purchase or carry margin stock? ☐ Yes ☒ No

If the answer is "no", describe the specific purpose of the credit.
Investment in Little Isle IV LLC

I (We) have read this form and certify that to the best of my (our) knowledge and belief the information given is true, accurate, and complete, and that the margin stock and any other securities collateralizing this credit are authentic, genuine, unaltered, and not stolen, forged, or counterfeit.

Signed: [Signature] Signed: _____
 Borrower's Signature Date Borrower's Signature Date
Steven A Rucchin 1/03/05 _____
 Print or Type Name Print or Type Name

NEW EVIDENCE for Rule 33 – November 11, 2016

In addition to the ***EXTENSION OF CREDIT*** documents that were signed by all 8 LOC clients – ***included in the annual renewal packages*** for each client were the following documents, each requiring unique signatures –

- 1. Master Note Agreement,***
- 2. Disbursement Request and Authorization,***
- 3. Pledge Agreement,***
- 4. Change in Terms Agreement,***
- 5. Promissory Note Agreement,***
- 6. Peg Balance Report,***
- 7. Security Account Control Agreement, and***
- 8. And annual Credit Applications***

- It should be noted that at the end of every calendar year for taxes – each LOC client received a 1099-INT form from Northern Trust also recognizing the “*use of funds*” ...and the various interest payments that were made on their LOC. ***NONE of these were in the Northern Trust subpoena -- nor did any of the LOC investors complain about their annual tax deductions.***

In fact – the first two (2) LOC ***EXTENSION OF CREDIT*** documents were signed by Nolan and Juneau in December 2003 to initiate the Little Isle 4 LOC – before Nolan signed another LOC as an additional investment in Hawai'i.

Both Juneau and Nolan received the original LOC documents for Little Isle 4 and faxed them back to Northern Trust. Please see the fax time stamps on the two-signed documents as follows –

Juneau – \$500,000 – Real Estate investment – 12-16-2003 --

NEW EVIDENCE for Rule 33 – November 11, 2016

PART I To be completed by borrower(s)

1. What is the amount of the credit being extended? \$500,000

2. Will any part of this credit be used to purchase or carry margin stock? ☐ Yes ☒ No

If the answer is "no", describe the specific purpose of the credit. Real Estate Investment

I (We) have read this form and certify that to the best of my (our) knowledge and belief the information given is true, accurate, and complete, and that the margin stock and any other securities collateralizing this credit are authentic, altered, and not stolen, forged, or counterfeit.

Signed: [Signature] [Signature]

Borrower's Signature Joe Juneau Date 12-15-2003

Print or Type Name Joe Juneau

SIGN HERE

Borrower's Signature _____ Date _____

Print or Type Name _____

This form should not be signed if blank.

A borrower who falsely certifies the purpose of a credit on this form or otherwise willfully or intentionally evades the provisions of Regulation U will also violate Federal Reserve Regulation X, "Borrowers of Securities Credit."

p. 3

NAAZ011636
Dec 16 03 05:48a

Faxed to
Northern
Trust...

Nolan - \$500,000 - Real Estate investment - 12-15-2003 (the day before Juneau) --

NEW EVIDENCE for Rule 33 – November 11, 2016


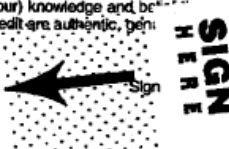
PART I To be completed by borrower(s)

1. What is the amount of the credit being extended? \$ 500,000

2. Will any part of this credit be used to purchase or carry margin stock? ☐ Yes ☒ No

If the answer is "no", describe the specific purpose of the credit. Real Estate Investment

I (We) have read this form and certify that to the best of my (our) knowledge and belief, the information given is true, accurate, and complete, and that the margin stock and any other securities collateralizing this credit are authentic, bona fide, and not stolen, forged, or counterfeit.

Signed:  

Borrower's Signature _____ Date _____ Borrower's Signature _____ Date _____

Owen Nolan _____

Print or Type Name _____ Print or Type Name _____

This form should not be signed if blank.

A borrower who falsely certifies the purpose of a credit on this form or otherwise willfully or intentionally evades the provisions of Regulation U will also violate Federal Reserve Regulation X, "Borrowers of Securities Credit."

NAAZ011638

Dec 15 03 07:07p

Faxed to
Northern
Trust...

Nolan signed this document after receiving a 39-page fax from Kenner in December 2003 as follows –

See R33 502 -- Nolan 39-page fax cover sheet of Dec 2003

NEW EVIDENCE for Rule 33 – November 11, 2016

facsimile transmittal

To: Owen Nolan Fax: 416 484 8407

From: Phil Kenner Date: 12/15/03

Re: NT docs Pages: 39 -- including cover

CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

OWEN: Please sign the three (3) docs where the signatures are required. These docs need to be sent VIA FEDEX to: Nelson Lerner c/o Northern Trust Bank, 2398 East Camelback Road, Suite 400, Phoenix, AZ 85016. Please send them via International FEDEX. (FEDEX # 2699 9186 0).

Let me know if you have any questions before you send them. pk

Nothing CONCEALED by Kenner for Nolan to read, review, sign and mail to Northern Trust -- OR -- ask 1000 questions first...

Obviously Northern Trust received the Nolan and Juneau docs via FedEx -- because the LOC was funded -- less than one week later for the 12/23/2003 Hawaii closing...

Please note that these 2003 documents were in both Nolan and Juneau's personal possession before they signed them -- not Kenner's possession as the government alleged thru their manipulative questioning of witnesses --

NEW EVIDENCE for Rule 33 – November 11, 2016

Juneau claimed he was not aware of the LOC until 2006, as follows –

25 Q. Did there come a time that you -- or do you recall
PAUL J. LOMBARDI, CERTIFIED REALTIME REPORTER
Official Court Reporter
139
1 that there was a line of credit through a bank known as
2 Northern Trust that you had agreed to?
3 A. Something came up, I think it was in sometime in
4 2006, around that time --

Juneau claimed to not remember opening the LOC – further insinuating that Kenner was doing it without his knowledge –

140
1 What is the date that's indicated there, or
2 maybe it's on the first page?
3 A. There's no date there --
4 Q. The very top?
5 A. December 18, 2003.
6 Q. Was that about the time that you recall first
7 agreeing to open up a line of credit?
8 A. No.
9 Again, I don't, I don't recall opening a line of
10 credit. It's possible I did, but I do not remember
11 that --
12 Q. Okay.
13 A. -- whatsoever.

- *Please note that if Juneau had found out in 2006 – after his retirement that Kenner (or anyone) had opened up a \$500,000 investment three years earlier in 2003 without his knowledge – he would have been furious (like anyone) and 100% distrusting...*
- *...**But instead** – Juneau sent Kenner the following email confessing that it was himself (Juneau) that wanted out of the private investments – AND – Juneau wanted Kenner to continue managing his bond investments at Northern Trust “under your (Kenner) management”...*

See EDNY issues 162 -- Juneau emails Kenner in 2005 -- DS-00000002

NEW EVIDENCE for Rule 33 – November 11, 2016

-----Message d'origine-----
 De : Jo  Juneau
 Envoy  : May 18, 2005 8:28 AM
   : 'Phil Kenner'
 Objet : RE: questions....

Phil, like I told you a few times already. I'm not very comfortable with this situation. It's has nothing to do with you but everything to do with the way I am. I want a very simple and head hake free life. I'm worth between 15 and 20 millions depending on some of the investments with you.

The problem is that I only have 2.4 in cash. There is over 3.2 millions between the RCA differed \$ and Teknik that I want to get back as soon as possible. And there's another 1.2 between Avalon and Diamante that I'd love to also see invested at Northern Trust. THIS IS ALL CAD BY THE WAY.

This is roughly around 7 millions CAD and I just want to have it invested in BONDS with Northern Trust under your management. There is plenty of more risky stuff still there (around 1.5 million between Eufora, Ecser, BSD, Harfan, Teknik and Impact). That's 22%. That also leaves me with a good \$ in real estate between my houses, Sotracom and whatever \$s you'll get me in Mexico, Hawaii and Scottsdale.

I need to plan my budget accordingly and relay on the Northern Trust investment return for leaving.

Let me know what you think.

...Under
Kenner
managem
ent

- Juneau – in May 2005 – is clearly aware of all of his investments with Kenner.
- ***Do not disregard*** that Juneau received a 5-year degree from Rensselaer Polytechnic Institute (*in 4 years*) as an Aerospace Engineer (*aka...rocket scientist*) – and was named the “*smartest athlete in the world*” by Sports Illustrated during his NHL career. English is Juneau’s 2nd language out of three that he is fluent in.

Thus – the government let Juneau perjure himself about his knowledge of the 2003 Hawai'i investment – just like all of the other LOC investors.

- ***Please note that this email is written to Kenner in May 2005 – thus – Juneau could not have found out about the Hawai'i investment in 2006 – one year later – since he wrote it in May 2005 –***

For Hawaii, I'd love to go and see that! I'd like to also see how the \$s work.

NEW EVIDENCE for Rule 33 – November 11, 2016

- ❖ Please note that Juneau was the only investor (*other than Manfredi*) who invested no direct cash in the Hawai'i partners. Juneau's only investment was thru his Little Isle 4 LOC – ***so Juneau had to be aware of it when he wrote the May 2005 email.***

The misleading LOC questions to Nolan alleged that Kenner – *NOT Nolan* – opened the Little Isle 4 LOC &/or Nolan's personal LOC without his knowledge as follows –

12 Q There has been testimony in this case about lines of
13 credit.
14 Did you ever have a line of credit associated
15 with your investment in Hawaii?
16 A No.
17 Q Did you ever authorize Mr. Kenner to open up a line
18 of credit in your name?
19 A No.
20 Q Did you ever authorize Mr. Kenner to open up a line
21 of credit in a company called Little Isle IV?
22 A No.

Disbursement Request and Authorization documents (signed annually by all LOC clients) –

The ***Disbursement Request and Authorization*** which was signed annually by each client included the “***disbursed amounts***” of each LOC, contradicting the government's proffers and witness testimony, ***specifically*** that some of them were unaware of the funds that had been used by Kenner &/or Little Isle 4.

Nolan from EDNY –

NEW EVIDENCE for Rule 33 – November 11, 2016

12 Q There has been testimony in this case about lines of
13 credit.
14 Did you ever have a line of credit associated
15 with your investment in Hawaii?
16 A No.
17 Q Did you ever authorize Mr. Kenner to open up a line
18 of credit in your name?
19 A No.
20 Q Did you ever authorize Mr. Kenner to open up a line
21 of credit in a company called Little Isle IV?
22 A No.
23 Q What about if there was a company called Little Isle
24 IV and you and Mr. Joe Juneau and Mr. Kenner were somehow
25 vouching for a line of credit in Little Isle IV, do you
Owen M. Wicker, RPR
Official Court Reporter
2066
1 have any memory doing that?
2 A No.

Notwithstanding Nolan's 2015 testimony – Nolan also testified in his 2009 arbitration as follows –

13 Q. Did he discuss with you securing a line of credit
14 for the Hawaii investment?
15 A. No.

- Please note that this alleged "*lack of knowledge*" was the basis for the court order for Kenner to buy Nolan out of his \$2.2mm Hawai'i investment. *The 3-judge arbitration panel found no wrongdoings or fraud by Kenner – only Nolan's utter alleged lack of knowledge.*
- Please see the texts (*below*) confirming the detailed discussion of the LOC in December 2007 between Kenner and Nolan – confirming his complete knowledge (*disregarded by the government at the EDNY trial and during the 2016 forfeiture hearings*).

Nolan Northern Trust 2005 Disbursement Request & Authorization –


NEW EVIDENCE for Rule 33 – November 11, 2016

SPECIFIC PURPOSE. The specific purpose of this loan is: Renewal of line of credit originally used for investment in Little Isle IV LLC.

DISBURSEMENT INSTRUCTIONS. Borrower understands that no loan proceeds will be disbursed until all of Lender's conditions for making the loan have been satisfied. Please disburse the loan proceeds of \$2,200,000.00 as follows:

Undisbursed Funds:	\$11,352.91
Amount paid to others on Borrower's behalf:	\$2,188,637.09
\$2,188,637.09 to Balance at time of renewal	
Note Principal:	\$2,200,000.00

FINANCIAL CONDITION. BY SIGNING THIS AUTHORIZATION, BORROWER REPRESENTS AND WARRANTS TO LENDER THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND CORRECT AND THAT THERE HAS BEEN NO MATERIAL ADVERSE CHANGE IN BORROWER'S FINANCIAL CONDITION AS DISCLOSED IN BORROWER'S MOST RECENT FINANCIAL STATEMENT TO LENDER. THIS AUTHORIZATION IS DATED OCTOBER 15, 2005.

BORROWER: 

X
OWEN NOLAN

Disbursed

Nolan Northern Trust 2006 Disbursement Request & Authorization –


SPECIFIC PURPOSE. The specific purpose of this loan is: Renewal of line of credit originally used for investment in Little Isle IV LLC.

DISBURSEMENT INSTRUCTIONS. Borrower understands that no loan proceeds will be disbursed until all of Lender's conditions for making the loan have been satisfied. Please disburse the loan proceeds of \$2,200,000.00 as follows:

Undisbursed Funds:	\$823,693.00
Amount paid to others on Borrower's behalf:	\$1,376,307.00
\$1,376,307.00 to Balance at time of renewal	
Note Principal:	\$2,200,000.00

SUCCESSOR BANK NAME. NORTHERN TRUST, N.A. is successor to NORTHERN TRUST BANK, N.A. and to NORTHERN TRUST BANK OF ARIZONA, N.A. and for these purposes the names Northern Trust, N.A. and Northern Trust Bank, N.A. and Northern Trust Bank of Arizona, N.A. shall be read as being one and the same as to the rights, duties and obligations herein.

FINANCIAL CONDITION. BY SIGNING THIS AUTHORIZATION, BORROWER REPRESENTS AND WARRANTS TO LENDER THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND CORRECT AND THAT THERE HAS BEEN NO MATERIAL ADVERSE CHANGE IN BORROWER'S FINANCIAL CONDITION AS DISCLOSED IN BORROWER'S MOST RECENT FINANCIAL STATEMENT TO LENDER. THIS AUTHORIZATION IS DATED NOVEMBER 3, 2006.

BORROWER: 

X
OWEN NOLAN

Disbursed

- Please note that the \$823,693 available balance was a result of the August 2006 Lehman Brothers closing payouts. Nolan used over \$600,000 to buy Juneau out of the Little Isle 4 investment and receive his 4% equity – as noted on Nolan's 2006 Little Isle 4 K1.

Nolan Northern Trust 2007 Disbursement Request & Authorization –

NEW EVIDENCE for Rule 33 – November 11, 2016


SPECIFIC PURPOSE: The specific purpose of this loan is: Renewal of line of credit originally used for investment in Little Isle IV LLC.

DISBURSEMENT INSTRUCTIONS: Borrower understands that no loan proceeds will be disbursed until all of Lender's conditions for making the loan have been satisfied. Please disburse the loan proceeds of \$2,200,000.00 as follows:

Undisbursed Funds:	\$10,203.98
Amount paid to others on Borrower's behalf:	\$2,189,796.02
\$2,189,796.02 to Balance at time of renewal	
Note Principal:	\$2,200,000.00

SUCCESSOR BANK NAME: NORTHERN TRUST, N.A. is successor to NORTHERN TRUST BANK, N.A. and to NORTHERN TRUST BANK OF ARIZONA, N.A., and for these purposes the names Northern Trust, N.A. and Northern Trust Bank, N.A. and Northern Trust Bank of Arizona, N.A. shall be read as being one and the same as to the rights, duties and obligations herein.

FINANCIAL CONDITION. BY SIGNING THIS AUTHORIZATION, BORROWER REPRESENTS AND WARRANTS TO LENDER THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND CORRECT AND THAT THERE HAS BEEN NO MATERIAL ADVERSE CHANGE IN BORROWER'S FINANCIAL CONDITION AS DISCLOSED IN BORROWER'S MOST RECENT FINANCIAL STATEMENT TO LENDER. THIS AUTHORIZATION IS DATED NOVEMBER 3, 2007.

BORROWER: 

X
OWEN NOLAN

Disbursed

- Please note that this 2007 Disbursement Request and Authorization was signed after the text messages between Nolan and Kenner (below) in December 2007 as follows – (**Kenner responses in RED**)

From Kenner to Nolan –

37	+14169970110 Owen Nolan*	12/23/2007 3:40:50 PM(UTC+0)	Sent	I need to send you via FEDEX LOC docs from Northern Trust that MUST be signed and returned by the end of the year. Where are you the day after XMAS??
----	-----------------------------	------------------------------	------	---

From Nolan to Kenner –

41	+14169970110 Owen Nolan*	12/23/2007 6:40:59 PM(UTC+0)	Read	What r the papers for
42	+14169970110 Owen Nolan*	12/23/2007 6:41:26 PM(UTC+0)	Read	And why the sudden rush

From Kenner to Nolan –

38	+14169970110 Owen Nolan*	12/23/2007 7:09:24 PM(UTC+0)	Sent	The papers are for your Line of Credit at Northern Trust. The Bank sent them to me for the renewal of the LOC on friday and said they
----	-----------------------------	------------------------------	------	---



NEW EVIDENCE for Rule 33 – November 11, 2016

				MUST be signed and returned by end of year. Its not just you. All of the guys have to do it. I don't make these rules. Where can I send them for next Wednesday or thursday fedex delivery?? Pk	
39	+1416997011 0 Owen Nolan*	12/23/2007 7:12:23 PM(UTC+0)	Sent	Can you also plz ask Diana for the ppwk I faxed a while ago for VortalOptics?? I need you to sign and fax them to me at 480.314.3795. Then, we can have your shares registered. Your ppwk is the last of the guys to get done. Happy Holidays. I hope the kids are well!!	

From Nolan to Kenner –

45	+1416997011 0 Owen Nolan*	12/26/2007 5:26:24 AM(UTC+0)	Read	Westin bayshore vancouver we leave tommorrow	
----	---------------------------------	------------------------------	------	--	--

From Kenner to Nolan –

42	+1416997011 0 Owen Nolan*	12/26/2007 1:34:06 PM(UTC+0)	Sent	It already was sent to Calgary. It will be there when you return. Please just sign and return asap. Happy Holidays!!	
----	---------------------------------	------------------------------	------	--	--

Kenner sends Nolan the 2007 renewal docs via FEDEX on 12-26-07 -- BNK-AMEX-1638

12/26/07	FEDEX# 831050944488 MEMPHIS TN	31.14
NO REFERENCE INFOT3H0Z7		
TO: OWEN NOLAN CA		
FROM: PHIL KENNER 85259		
001 FEDEX ENVELO 1LB AWB831050944488		
FedEx #1-800-622-1147		

From Nolan to Kenner –

46	+1416997011 0 Owen Nolan*	12/28/2007 6:04:48 PM(UTC+0)	Read	Where's the package that needs signed plus jp needs 200000 for toronto	
----	---------------------------------	------------------------------	------	---	--

NEW EVIDENCE for Rule 33 – November 11, 2016

				settlement where r we getting that money since everything is tied up	
47	+1416997011 0 Owen Nolan*	12/28/2007 6:06:04 PM(UTC+0)	Read	He said in order to write it off it needs to be paid this year	
48	+1416997011 0 Owen Nolan*	12/28/2007 6:07:04 PM(UTC+0)	Read	Call me need to discuss this	
49	+1416997011 0 Owen Nolan*	12/29/2007 3:46:45 AM(UTC+0)	Read	Can u call me back I have a question about papers	

Nolan returned the LOC info to Northern Trust via FedEx) – AFTER – CONVERSATION with Kenner... BNK-AMEX-1640 –



FedEx #1-800-622-1147				
12/31/07	FEDEX# 831050944477 MEMPHIS	TN		39.73
	NO REFERENCE INFO85016			
	TO: NORTHERN TRUST US			
	FROM: OWEN NOLAN			
	001 FEDEX ENVELO 1LB AWB831050944477			
	FedEx #1-800-622-1147			
01/01/08	HMS HOST - SLC-AIRPQSALT LAKE CIT	UT		26.57
	8015752611			

Please note that Nolan sent this text to Kenner on December 28, 2007 –

“where r we getting that money since everything is tied up”

❖ ***This is a clear confirmation that Nolan knew his \$2mm PLUS BOND account at Northern Trust was pledged as well for the LOC.***

Now – Michael Peca signed the same ***Disbursement Requests and Authorization*** documents as Nolan from 2005 thru 2009.

Notwithstanding the Northern Trust disclosures in the following documents – Michael Peca stated the following to the EDNY –

NEW EVIDENCE for Rule 33 – November 11, 2016

24	Q.	During this period of time of October of '06 did you
25		get any statement whether from the bank or Mr. Kenner or
M. Peca - Direct/Miskiewicz		
		430
1		anybody, saying that you have drawn down \$1.6 million on
2		your line of credit?
3	A.	No.
4	Q.	Other than you testified about the bonds statements,
5		did you get anything indicating how much was borrowed?
6	A.	I did not.

Michael Peca
allegedly didn't know
loan balances...

But – Michael Peca signed the following –

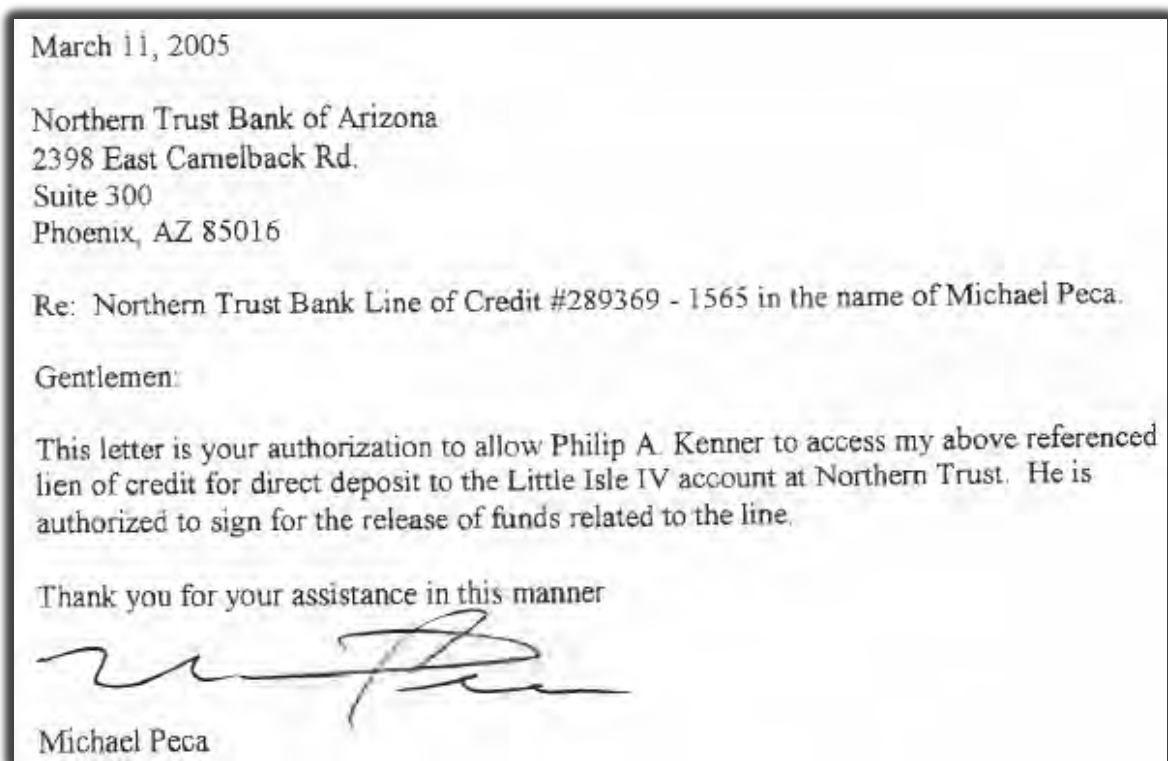
Peca Northern Trust 2005 Disbursement Request & Authorization –

SPECIFIC PURPOSE. The specific purpose of this loan is: Modification to increase line to \$1,775,000.00, originally used to Speculative real estate investments...	
DISBURSEMENT INSTRUCTIONS. Borrower understands that no loan proceeds will be disbursed until all of Lender's conditions for making the loan have been satisfied. Please disburse the loan proceeds of \$1,775,000.00 as follows:	
Undisbursed Funds:	\$175,000.00
Amount paid to others on Borrower's behalf:	\$1,600,000.00
	\$1,600,000.00 to Balance at time of modification
Note Principal:	\$1,775,000.00
FINANCIAL CONDITION. BY SIGNING THIS AUTHORIZATION, BORROWER REPRESENTS AND WARRANTS TO LENDER THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND CORRECT AND THAT THERE HAS BEEN NO MATERIAL ADVERSE CHANGE IN BORROWER'S FINANCIAL CONDITION AS DISCLOSED IN BORROWER'S MOST RECENT FINANCIAL STATEMENT TO LENDER. THIS AUTHORIZATION IS DATED JULY 1, 2005.	
BORROWER:	
<div style="display: flex; align-items: center;"> <div style="margin-right: 10px;">X</div> </div>	
MICHAEL PECA	

Disbursed

So – within a few months of ***Peca's Letter of Authorization for Little Isle 4*** – signed as follows –

NEW EVIDENCE for Rule 33 – November 11, 2016



Michael Peca signed the **DISBURSEMENT** document in July 2005. This document clearly acknowledged that **\$1,600,000 was used** that Michael Peca had given authorization to withdraw (*above*).

Then – Michael Peca signed the **EXTENSION OF CREDIT** document for another \$175,000 for the Little Isle 4 investment. Those “**UNDISBURSED FUNDS**” are recognized as well on the 2005 Disbursement document (*above*) and are irrefutable.

See R33 580a -- NT 2005 Peca Extension of Credit

NEW EVIDENCE for Rule 33 – November 11, 2016

PART I To be completed by borrower(s)

1. What is the amount of the credit being extended? \$1,775,000.00

2. Will any part of this credit be used to purchase or carry margin stock? ☐ Yes ☒ No

If the answer is "no", describe the specific purpose of the credit.

Increase to existing loan used for speculative real estate investments

I (We) have read this form and certify that to the best of my (our) knowledge and belief the information given is true, accurate, and complete, and that the margin stock and any other securities collateralizing this credit are authentic, genuine, unaltered, and not stolen, forged, or counterfeit.

Signed: [Signature] 6-30-05 Date

Borrower's Signature Date

Michael Peca Print or Type Name

Signed: _____ Date _____

Borrower's Signature Date

Print or Type Name

- Please note that the Northern Trust subpoenaed documents for Michael Peca are *missing the 2006 and 2007-signed Disbursement documents, the 2006 Securities Account Control Agreement (in Kenner's home office evidence), and many others.*

In the EDNY – Berard also claimed that he did not expect his funds to be used from his LOC – DESPITE Berard's overwhelmingly clear testimony from the 2009 Nolan Arbitration – as follows –

Berard from EDNY –

Q. When you opened up your line of credit with respect
Mary Ann Steiger, CSR
Official Court Reporter

Berard - Direct/Miskiewicz

3036

to the Hawaii deal, did you have any understanding as to how that line of credit funding could be used?

A. I didn't think any of the money – I thought it would be interest payments. I didn't think any of the money would be used out of my line of credit.

Q. What about investing portions of your line of credit to places let's say in Mexico?

A. No.

BUT -- From 2009 Nolan arbitration –

NEW EVIDENCE for Rule 33 – November 11, 2016

9 Q. When you were -- as far as the Hawaii deal, were
10 you made aware of any sort of transaction Mr. Kenner set up
11 where you can give a commitment or pledge a credit line in
12 lieu of putting all your money in initially?

13 A. Yes.

14 Q. Can you tell the panel what was your
15 understanding?

16 A. Basically the company -- it was set up. The
17 company would pay the payments. I would pledge the money,
18 obviously to get the loan for the property. Again, the
19 company would pay the payments, and I wasn't forfeiting all
20 the amount of money for the piece of property.

21 Q. Were you aware that Mr. Kenner got a credit line
22 against some securities or investments you had?

23 A. Yes.

24 Q. And later on were you aware that Mr. Kenner
25 starting lending this money to another principal in the

916

1 Cabo project named Ken Jowdy?

2 A. Yes.

Page 76

Day5.txt

3 Q. Were you aware that he had disclosed to you that
4 he was going to lend this money at a rate of interest to
5 benefit the investors?

6 A. Yes.

Berard went on to confirm the LOC usage as follows at the Nolan 2009 arbitration –

NEW EVIDENCE for Rule 33 – November 11, 2016

13 Q. BY MR. RICHARDS: Where did you think the money
14 that Mr. Jowdy -- were you told where the money was going
15 to be used that was given Mr. Jowdy as far as the Mexican
16 project? Was there anything you were told about that?

17 A. Basically just loan him the money for the
18 property.

19 Q. What about bank statements; did you have any
20 problem getting any of your bank statements from Mr. Kenner
21 at any time?

22 A. Not at all.

23 Q. And prior to signing any of these documents did
24 you have access to your own attorney unconnected to
25 Mr. Kenner to review this?

917

1 A. Yes, I did. We have a family attorney back home
2 where before I sign any documents basically -- I went to
3 his office, sat with him. We reviewed them, and I signed
4 them and basically FedEx'd them to Phil.

Berard confirmed he knew the funds could be tied up for a while as well –

19 Q. At any time did someone tell you that you would
20 be able to get this money back at a specific date?

21 A. Not at all.

22 Q. Did you understand that investing in a
23 transaction like this, that your money could be tied up for
24 a while?

25 A. Yes, I understand how that works.

918

Despite Berard's crystal clear 2009 knowledge and testimony -- in the 2015 EDNY (6 years later) – Berard went on to lie to the court about the use of the funds in 2005 as follows –

NEW EVIDENCE for Rule 33 – November 11, 2016

Q. So at or about this time, March 24, 2005, did you know that your line of credit had already been increased or borrowed against to the amount of \$685,000?

A. No, I did not.

But – Berard signed the following documents for Northern Trust in 2005, 2006, 2007 & 2008 –


Berard Northern Trust 2006 Disbursement Request & Authorization –

SPECIFIC PURPOSE. The specific purpose of this loan is: Renewal of existing line of credit originally used for investment in speculative real estate.

DISBURSEMENT INSTRUCTIONS. Borrower understands that no loan proceeds will be disbursed until all of Lender's conditions for making the loan have been satisfied. Please disburse the loan proceeds of \$900,000.00 as follows:

Undisbursed Funds:	\$4,650.00
Amount paid to others on Borrower's behalf:	\$895,350.00
\$895,350.00 to Balance at time of renewal	
Note Principal:	\$900,000.00

FINANCIAL CONDITION. BY SIGNING THIS AUTHORIZATION, BORROWER REPRESENTS AND WARRANTS TO LENDER THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND CORRECT AND THAT THERE HAS BEEN NO MATERIAL ADVERSE CHANGE IN BORROWER'S FINANCIAL CONDITION AS DISCLOSED IN BORROWER'S MOST RECENT FINANCIAL STATEMENT TO LENDER. THIS AUTHORIZATION IS DATED MARCH 7, 2006.

BORROWER: 

X **BRYAN BERARD**

Disbursed

Berard Northern Trust 2007 Disbursement Request & Authorization –

SPECIFIC PURPOSE. The specific purpose of this loan is: Renewal to extend the maturity date, originally used for investment in speculative real estate.

DISBURSEMENT INSTRUCTIONS. Borrower understands that no loan proceeds will be disbursed until all of Lender's conditions for making the loan have been satisfied. Please disburse the loan proceeds of \$900,000.00 as follows:

Undisbursed Funds:	\$282,088.10
Amount paid to others on Borrower's behalf:	\$617,911.90
\$617,911.90 to Balance at time of renewal	
Note Principal:	\$900,000.00

SUCCESSOR BANK NAME. NORTHERN TRUST, NA is successor to NORTHERN TRUST BANK, N.A. and to NORTHERN TRUST BANK OF ARIZONA, N.A. and for these purposes the names Northern Trust, NA and Northern Trust Bank, N.A. and Northern Trust Bank of Arizona, N.A. shall be read as being one and the same as to the rights, duties and obligations herein.

FINANCIAL CONDITION. BY SIGNING THIS AUTHORIZATION, BORROWER REPRESENTS AND WARRANTS TO LENDER THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND CORRECT AND THAT THERE HAS BEEN NO MATERIAL ADVERSE CHANGE IN BORROWER'S FINANCIAL CONDITION AS DISCLOSED IN BORROWER'S MOST RECENT FINANCIAL STATEMENT TO LENDER. THIS AUTHORIZATION IS DATED MARCH 7, 2007.

BORROWER: 

X **BRYAN BERARD**

Disbursed

NEW EVIDENCE for Rule 33 – November 11, 2016

- Please note that the **disbursed funds** are reduced after the Lehman Brothers August 2006 closing.

Berard Northern Trust 2008 Disbursement Request & Authorization –

SPECIFIC PURPOSE. The specific purpose of this loan is: Renew & decrease loan amount from \$900M to \$650M, originally used for investment in speculative real estate.

DISBURSEMENT INSTRUCTIONS. Borrower understands that no loan proceeds will be disbursed until all of Lender's conditions for making the loan have been satisfied. Please disburse the loan proceeds of \$650,000.00 as follows:

Undisbursed Funds:	\$32,088.10
Other Disbursements:	\$617,911.90
\$617,911.90 Balance at time of renewal/decrease	
Note Principal:	\$650,000.00

FINANCIAL CONDITION. BY SIGNING THIS AUTHORIZATION, BORROWER REPRESENTS AND WARRANTS TO LENDER THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND CORRECT AND THAT THERE HAS BEEN NO MATERIAL ADVERSE CHANGE IN BORROWER'S FINANCIAL CONDITION AS DISCLOSED IN BORROWER'S MOST RECENT FINANCIAL STATEMENT TO LENDER. THIS AUTHORIZATION IS DATED MARCH 7, 2008.

BORROWER:

X 
BRYAN BERARD

Disbursed

- Please note that after Berard received the “*reduction letter*” from Mascarella at Northern Trust (*below*) – Berard signed new LOC documents and maintained a \$650,000 LOC for Little Isle 4 reduced from the original \$900,000 investment.
- Each LOC client received the same reduction offer from Mascarella after the August 2006 Lehman Brothers closing – none of which were turned over in the Northern Trust subpoenaed documents during EDNY trial (only the Berard letter was in the Kenner home/office search and seizure).

See R33 659b2 – Mascarella letter to Berard re- LOC reduction

Then -- Berard also lied about finding out after the LOC collateral was seized despite the texts between the parties prior to the seizure and Berard's direct communication with the Northern Trust (*below*) --

NEW EVIDENCE for Rule 33 – November 11, 2016

Q. How did you find out about that?
A. Honestly, I was playing in Russia. I got back in 2009, and basically remember just kind of getting a phone call from Northern Trust that I lost close to a million dollars in my pledge account.
Q. And at that time did you know what the balance, the outstanding balance was on that line of credit?
A. No, not at all.
Q. Was Mr. Kenner still your financial advisor during the period of time the line of credit was in operation?
A. Yes, he was.
Q. Did you receive any communication with him whatsoever about what was the status of your line of credit prior to you getting that notification from Northern Trust?
A. No. I called him after that phone call.

Berard claims he was NOT aware of the balance ...

There was nothing ***"HONEST"*** about the Berard EDNY testimony related to the Northern Trust LOC and the Jowdy loans.

But -- before the seizure of collateral for Berard – *and Berard's mandatory phone call with Mascarella and other Northern Trust bankers* – Berard and Kenner exchanged the following texts – clearly defining Berard's knowledge of the LOC and the funds that would be freed up after –

"payn off line of credit NT"

6207	+140152469 29 Bryan Berard*	3/26/2009 6:53:59 PM(UTC+0)	Read	When u get chance can we look at how much money will b freed up after payn off line of credit NT??? Thanks	
------	--------------------------------------	--------------------------------	------	---	--

After speaking with Northern Trust -- Kenner responded –

7280	+14015246929 Bryan Berard*	3/26/2009 7:00:51 PM(UTC+0)	Sent	~300k	
------	-------------------------------	-----------------------------	------	-------	--

Then – Berard confirmed his agreement and proposed another deal to actually do ***"WITH Kenner"*** regardless of the LOC issues he erroneously claimed at EDNY...

6208	+140152469 29 Bryan	3/26/2009 7:04:18 PM(UTC+0)	Read	Cool thanks!!! When will that b freed Gonna use 200 for a cool oppurtunity will show u	
------	---------------------------	--------------------------------	------	--	--

NEW EVIDENCE for Rule 33 – November 11, 2016

	Berard*			and talk 2 u abt it later. Good for all of us n future.	
--	---------	--	--	--	--

"Good for all of us n future."

In fact – the only thing that Berard wanted from Kenner after the knowledge of the LOC collateral seizure was for Kenner to look at another investment for him – ***"for all of us n future"***. There was NO lack of confidence in Kenner exhibited by Berard at the time of the collateral seizure.

From Berard --

6243	+140152469 29 Bryan Berard*	3/30/2009 1:42:13 PM(UTC+0)	Read	Emailed u that investment package I was talkn abt and other email explaining take a look get back 2 me!! Somethn I'm really interested in	
------	--------------------------------------	--------------------------------	------	--	--

Kenner responds –

7318	+1401524692 9 Bryan Berard*	3/30/2009 2:12:36 PM(UTC+0)	Sent	I'm off to Hawaii for 36 hours. I'll read it on the way. I downloaded it to look at. U home? Get your stuff?	
------	--------------------------------------	--------------------------------	------	---	--

From Berard –

6245	+140152469 29 Bryan Berard*	3/30/2009 2:16:35 PM(UTC+0)	Read	Cool after read let me know!!!! I had meetn wth them and looked over everything looks really nice. Thanks.	
------	--------------------------------------	--------------------------------	------	---	--

From Berard –

6272	+140152469 29 Bryan Berard*	3/31/2009 8:32:51 PM(UTC+0)	Read	Me n chief n moscow goin grab cpl hookers!! Only got 50gs though pissed owes me another 600gs need it top pay off RI tax audit pissed	
6273	+140152469 29 Bryan Berard*	3/31/2009 8:34:45 PM(UTC+0)	Read	Doesn't have yet. Says will have chiefs by april 30th mine by may 30th think a ploy 2 resign us!!! Hey u look over	

NEW EVIDENCE for Rule 33 – November 11, 2016

				email I sent u???	
--	--	--	--	-------------------	--

Kenner responded –

7353	+1401524692 9 Bryan Berard*	3/31/2009 8:41:09 PM(UTC+0)	Sent	I will tonight on my flight home. I haven't slept in 48 hours since I got here. Crazy stupid stuff	
------	--------------------------------------	--------------------------------	------	--	--

Clearly the LOC loss (*payoff*) at Northern Trust was not affecting Berard's relationship with Kenner – which happened after the culmination of these texts between Kenner and Berard – and after Berard spoke with Mascarella and Catherine Brill from Northern Trust on the phone (***mandated by Northern Trust***).

See R33 659c1 -- NT - Berard LOC History Report – Berard

View Loan Transaction History - 252996-1542 Note - Bank 181					Page 1 of 4
Berard Bryan 252996-1542 Note					

View Loan Transaction History - 252996-1542 Note - Bank 181					Page 4 of 4
03/31/2009	680 - Special payment	589732.37	589,732.37	0.00	59,673.56
03/31/2009					
04/01/2009	650 - Loan payoff	60977.35	59,673.56	1303.79	0.00
04/02/2009					

Steve Rucchin was also aware at all times – thru his annual renewal documents – that his LOC funds were “*in use*” by Little Isle 4 as follows --

Rucchin Northern Trust 2005 Disbursement Request & Authorization –

NEW EVIDENCE for Rule 33 – November 11, 2016


SPECIFIC PURPOSE. The specific purpose of this loan is: Renewal of Revolving Line of Credit originally used for investment in Little Isle IV LLC.

DISBURSEMENT INSTRUCTIONS. Borrower understands that no loan proceeds will be disbursed until all of Lender's conditions for making the loan have been satisfied. Please disburse the loan proceeds of \$1,000,000.00 as follows:

Amount paid to others on Borrower's behalf:	\$1,000,000.00
\$1,000,000.00 to Balance at time of renewal	
Note Principal:	\$1,000,000.00

FINANCIAL CONDITION. BY SIGNING THIS AUTHORIZATION, BORROWER REPRESENTS AND WARRANTS TO LENDER THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND CORRECT AND THAT THERE HAS BEEN NO MATERIAL ADVERSE CHANGE IN BORROWER'S FINANCIAL CONDITION AS DISCLOSED IN BORROWER'S MOST RECENT FINANCIAL STATEMENT TO LENDER. THIS AUTHORIZATION IS DATED NOVEMBER 3, 2005.

BORROWER:

X 
STEVEN A. RUCCHIN

FULLY
Disbursed**Rucchin Northern Trust 2006 Disbursement Request & Authorization –**

SPECIFIC PURPOSE. The specific purpose of this loan is: Renew to extend the maturity date.

DISBURSEMENT INSTRUCTIONS. Borrower understands that no loan proceeds will be disbursed until all of Lender's conditions for making the loan have been satisfied. Please disburse the loan proceeds of \$1,000,000.00 as follows:

Undisbursed Funds:	\$313,400.34
Other Disbursements:	\$686,599.66
\$686,599.66 Balance at time of modification	
Note Principal:	\$1,000,000.00

SUCCESSOR BANK NAME. NORTHERN TRUST, NA is successor to NORTHERN TRUST BANK, N.A. and to NORTHERN TRUST BANK OF ARIZONA, N.A., and for these purposes the names Northern Trust, NA and Northern Trust Bank, N.A. and Northern Trust Bank of Arizona, N.A. shall be read as being one and the same as to the rights, duties and obligations herein.

FINANCIAL CONDITION. BY SIGNING THIS AUTHORIZATION, BORROWER REPRESENTS AND WARRANTS TO LENDER THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND CORRECT AND THAT THERE HAS BEEN NO MATERIAL ADVERSE CHANGE IN BORROWER'S FINANCIAL CONDITION AS DISCLOSED IN BORROWER'S MOST RECENT FINANCIAL STATEMENT TO LENDER. THIS AUTHORIZATION IS DATED NOVEMBER 3, 2006.

BORROWER:

X 
STEVEN A. RUCCHIN

Disbursed

- Please note that after Rucchin received the "reduction letter" from Mascarella at Northern Trust – Rucchin decided not to sign new reduced LOC documents in 2006. Rucchin maintained a \$1,000,000 LOC for his Little Isle 4 investment thru Na'alehu Ventures 2006 after the closing.

In March 2007 – Rucchin changed his mind and requested that Kenner transfer \$300,000 from his LOC account to Robert Gaudet in México for an additional investment in Gaudet's project – Los Frailes.

Kenner obliged and handled the transfer for Rucchin.

As a result – Rucchin spent \$300,000 of the \$326,775 he received from the Lehman Brothers closing back to his LOC in August 2006 thru Na'alehu Ventures 2006. This is not counting the \$42,553 deposit Rucchin received in his Schwab investment account –

NEW EVIDENCE for Rule 33 – November 11, 2016

Rucchin Steven A
279806-1412 Note

Payoff...

08-25	Loan Payment	LOAN ACCOUNT # 279806 CLIENT SRVCS REF #4157342	326,775.00
-------	--------------	--	------------

Thus – with the following transfer to Gaudet (*from Ula Makika*) – Rucchin had no additional investment in the Na'alehu Ventures 2006 project -- post Lehman Brothers closing.

ULA MAKIKA LLC
10705 E CACTUS
SCOTTSDALE AZ 85259-2931

Statement Period
03/01/07 through 03/31/07

For Rucchin to
Gaudet's México
investment...

03-13	International Wire	ROBERT GAUDET	300,000.00
-------	--------------------	---------------	------------

Please note that Glen Murray, Mattias Norstrom and Darryl Sydor also signed similar **Disbursement Request and Authorization** documents every year of their LOC, as well (*but none were included in the Northern Trust subpoenaed materials*).

From Kenner's home/office search and seizure –

Norstrom Northern Trust 2005 Disbursement Request & Authorization –

SPECIFIC PURPOSE. The specific purpose of this loan is: Renewal of line of credit originally used for investment in Little Isle IV LLC.
DISBURSEMENT INSTRUCTIONS. Borrower understands that no loan proceeds will be disbursed until all of Lender's conditions for making the loan have been satisfied. Please disburse the loan proceeds of \$1,200,000.00 as follows:

Amount paid to others on Borrower's behalf:	\$1,200,000.00
\$1,200,000.00 to Balance at time of renewal	

Note Principal:	\$1,200,000.00
-----------------	----------------

FINANCIAL CONDITION. BY SIGNING THIS AUTHORIZATION, BORROWER REPRESENTS AND WARRANTS TO LENDER THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND CORRECT AND THAT THERE HAS BEEN NO MATERIAL ADVERSE CHANGE IN BORROWER'S FINANCIAL CONDITION AS DISCLOSED IN BORROWER'S MOST RECENT FINANCIAL STATEMENT TO LENDER. THIS AUTHORIZATION IS DATED OCTOBER 29, 2005.

BORROWER:

X

MATTIAS NORSTROM

FULLY
Disbursed

LASER PRO Lending, Ver. 5.28 06/04 Copr. Harvard Financial Solutions, Inc. 1997, 2005. All Rights Reserved. - AZ L/LPS-AZCPH/PC/02/FC TR 24059 PR-18

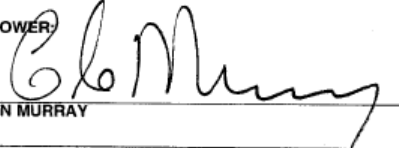
NEW EVIDENCE for Rule 33 – November 11, 2016**Murray Northern Trust 2005 Disbursement Request & Authorization –**

SPECIFIC PURPOSE. The specific purpose of this loan is: Renewal of line of credit originally used to invest in Little Isle LLC.

DISBURSEMENT INSTRUCTIONS. Borrower understands that no loan proceeds will be disbursed until all of Lender's conditions for making the loan have been satisfied. Please disburse the loan proceeds of \$1,230,000.00 as follows:

Amount paid to others on Borrower's behalf:	\$1,230,000.00
\$1,230,000.00 to Balance at time of renewal	
Note Principal:	\$1,230,000.00

FINANCIAL CONDITION. BY SIGNING THIS AUTHORIZATION, BORROWER REPRESENTS AND WARRANTS TO LENDER THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND CORRECT AND THAT THERE HAS BEEN NO MATERIAL ADVERSE CHANGE IN BORROWER'S FINANCIAL CONDITION AS DISCLOSED IN BORROWER'S MOST RECENT FINANCIAL STATEMENT TO LENDER. THIS AUTHORIZATION IS DATED OCTOBER 29, 2005.

BORROWER: 

X **GLEN MURRAY**

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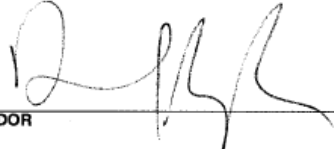
FULLY
Disbursed**Sydor Northern Trust 2005 Disbursement Request & Authorization –**

SPECIFIC PURPOSE. The specific purpose of this loan is: Renewal of line of credit originally use to invest in Little Isle LLC.

DISBURSEMENT INSTRUCTIONS. Borrower understands that no loan proceeds will be disbursed until all of Lender's conditions for making the loan have been satisfied. Please disburse the loan proceeds of \$1,225,000.00 as follows:

Undisbursed Funds:	\$1,241.67
Amount paid to others on Borrower's behalf:	\$1,223,758.33
\$1,223,758.33 to Balance at time of renewal	
Note Principal:	\$1,225,000.00

FINANCIAL CONDITION. BY SIGNING THIS AUTHORIZATION, BORROWER REPRESENTS AND WARRANTS TO LENDER THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND CORRECT AND THAT THERE HAS BEEN NO MATERIAL ADVERSE CHANGE IN BORROWER'S FINANCIAL CONDITION AS DISCLOSED IN BORROWER'S MOST RECENT FINANCIAL STATEMENT TO LENDER. THIS AUTHORIZATION IS DATED OCTOBER 29, 2005.

BORROWER: 

X **DARRYL SYDOR**

Almost
FULLY
Disbursed**Not one LOC client could claim to be unaware of the disbursements by 2005.****December 2007 LOC renewal documents received from Kenner and returned by the LOC clients directly to Northern Trust, both via Kenner's FedEx account –**

In late December 2007 -- All Kenner clients were sent a copy of the documents from Kenner (Kenner's AMEX & FedEx account confirms proof of sending) and all LOC clients returned the LOC documents **DIRECTLY** to Northern Trust before the end of the year with Kenner's FedEx account (documented on Kenner's AMEX bills in evidence).

Kenner sent all of the LOC documents to the clients via FedEx (Kenner's FedEx confirms are in EDNY evidence – **BNK-AMEX-###**) – as follows --

NEW EVIDENCE for Rule 33 – November 11, 2016**DUPLICATE COPY****Centurion® Card
Statement of Account**Prepared For
PHILIP A KENNERAccount Number
XXXX-XXXXX7-41001Closing Date
12/30/07**BNK-AMEX-00001626**

To Peca –

12/26/07	FEDEX# 860646768803 MEMPHIS	TN	25.50
	FedEx #1-800-622-1147		
	TO: MICHAEL PECA OH		
	FROM: PHIL KENNER 85259		
	001 PRIORITY LTR 1LB AWB860646768803		
	FedEx #1-800-622-1147		

To Norstrom –

12/26/07	FEDEX# 860646768814 MEMPHIS	TN	27.91
	FedEx #1-800-622-1147		
	TO: MATTIAS NORSTROM TX		
	FROM: PHIL KENNER 85259		
	001 PRIORITY LTR 1LB AWB860646768814		
	FedEx #1-800-622-1147		

To Glen Murray –

12/26/07	FEDEX# 862063245359 MEMPHIS	TN	19.62
	FedEx #1-800-622-1147		
	TO: GLEN MURRAY MA		
	FROM: PHIL KENNER 85259		
	001 PRIORITY LTR 1LB AWB862063245359		
	FedEx #1-800-622-1147		

To Owen Nolan –

12/26/07	FEDEX# 831050944488 MEMPHIS	TN	31.14
	NO REFERENCE INFOT3H0Z7		
	TO: OWEN NOLAN CA		
	FROM: PHIL KENNER 85259		
	001 FEDEX ENVELO 1LB AWB831050944488		
	FedEx #1-800-622-1147		

NEW EVIDENCE for Rule 33 – November 11, 2016

- Please note that this FedEx package is the one represented by Kenner in the “EDNY – Nolan issues REPORT” confirming that Nolan LIED about his knowledge of the LOCs both in the 2009 arbitration and 2015 EDNY testimony.

To Rucchin –

12/26/07	FEDEX# 831050944499 MEMPHIS	TN	31.14
NO REFERENCE INFON6G1L7			
TO: STEVE RUCCHIN CA			
FROM: PHIL KENNER 85259			
001 FEDEX ENVELO 1LB AWB831050944499			
FedEx #1-800-622-1147			

...AND RETURNED TO Northern Trust by each individual client as follows –

All of the LOC clients sent their SIGNED documents back to Northern Trust directly using Kenner's Amex and FedEx account as follows –

From Norstrom to Northern Trust –

12/27/07	FEDEX# 860646768799 MEMPHIS	TN	35.49
FedEx #1-800-622-1147			
TO: NORTHERN TRUST AZ			
FROM: MATTIAS NORSTROM 85259			
001 PRIORITY PAK 1LB AWB860646768799			
FedEx #1-800-622-1147			

From Glen Murray to Northern Trust --

12/28/07	FEDEX# 860646768788 MEMPHIS	TN	26.03
FedEx #1-800-622-1147			
TO: NORTHERN TRUST AZ			
FROM: GLEN MURRAY 85259			
001 PRIORITY LTR 1LB AWB860646768788			
FedEx #1-800-622-1147			

From Michael Peca to Northern Trust --

12/28/07	FEDEX# 862063245267 MEMPHIS	TN	25.32
FedEx #1-800-622-1147			
TO: NORTHERN TRUST AZ			
FROM: MICHAEL PECA 85259			
001 PRIORITY LTR 1LB AWB862063245267			
FedEx #1-800-622-1147			

From Rucchin to Northern Trust –

NEW EVIDENCE for Rule 33 – November 11, 2016

12/28/07	FEDEX# 831050944503 MEMPHIS TN	37.17
	NO REFERENCE INFO85016	
	TO: NORTHERN TRUST US	
	FROM: STEVE RUCCHIN	
	001 FEDEX ENVELO 1LB AWB831050944503	
	YOUR FEDEX CUSTOM DISCOUNT IS \$2.07	

From Nolan to Northern Trust -- – AFTER – text & phone CONVERSATIONS with Kenner...

	FEDEX #1-800-622-1147	
12/31/07	FEDEX# 831050944477 MEMPHIS TN	39.73
	NO REFERENCE INFO85016	
	TO: NORTHERN TRUST US	
	FROM: OWEN NOLAN	
	001 FEDEX ENVELO 1LB AWB831050944477	
	FedEx #1-800-622-1147	
01/01/08	HMS HOST - SLC-AIRPQSALT LAKE CIT UT	26.57
	8015752611	

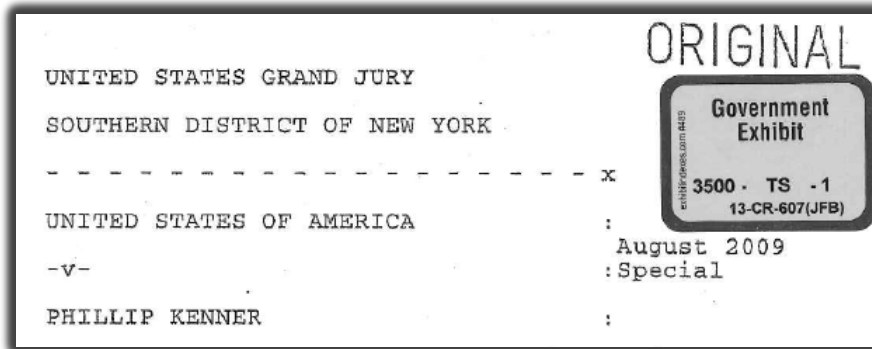
Pro Se Point III

Prosecutorial Misconduct for Rule 33

Prosecutorial Misconduct by the government

- **The additional evidence of perjury is sufficiently material to undermine confidence in the verdict, thus, there is a need to probe the extent of the Government's awareness of the perjury.**

The government called Kenner a “**liar**” while insinuating to the jury that it was unconscionable for Kenner to represent that the Former Director of the FBI (*Louis Freeh*) could exude any influence over the 2009 Jowdy and Najam EDNY (*Brooklyn*) Grand Jury “*as a favor*” and re-direct an investigation (*in his former district – SDNY*) on Kenner and a Special Grand Jury (*only 5 weeks after Kenner informed Galioto and the other investigators in the Jowdy investigation of Jowdy's \$25mm in thefts, embezzlements, frauds, etcetera*) – permanently disrupting almost 2 decades of Kenner's immaculate reputation in the sports and entertainment industry.



Even if Kenner’s assertion was somewhat believable, the government's proffer made it impossible for the jury to evaluate the facts and not be unduly influenced by the government's heavy-handed-rhetoric.

Notwithstanding – in the October 2016 government forfeiture submission – they referred to Jowdy as a “**co-conspirator**” for all of the funds that were transferred to México (*specifically from the Hawai'i project*). This reversal of position may be ½ correct – since it supports Kenner and Constantine's ongoing defense claims (*and the underlying evidence*) that Jowdy DID steal funds from Kenner and the Kenner investors (*within 3 days of their initial investments, unknown to Kenner and the Kenner investors, and solely for Jowdy's own benefit*)– just not in a co-conspiratorial role (*as all of the pre-trial evidence and Kenner actions confirm*).

- Please note that in Jowdy’s January 2010, 2-day confessional deposition – Jowdy **never** claimed that he was receiving any of the funds from México (*or Kenner’s other investors*) “**WITH**” Kenner in a co-conspiratorial role.

In fact – Jowdy confirmed in his January 2010 confessional deposition that he tried to bribe Kenner in 2007 with 20% of an unrelated project (*worth over \$20mm to Kenner*) for Kenner to “*go along*” with his Lehman Brothers/FBI protection scheme.

Prosecutorial Misconduct for Rule 33

Nonetheless -- after the submission of the well-thought-out forfeiture position by the government (*over 6 months after the conclusion of the forfeiture hearings*) – the government was immediately confronted by Jowdy’s attorneys at Louis Freeh’s firm (*Pepper Hamilton*).

The government – again at the direction and whim of Freeh’s special request, or direct threat, has asked the government to eliminate the language referring to Jowdy as a “**co-conspirator**”. The government has requested that the court allow the redaction to occur – despite their repeated affirmation that the statement is **NOW** correct in their perspective.

Although the lion-share of the top 100 egregious lies presented by the government were addressed in the original CD that Kenner turned over to the court after the forfeiture hearings (*ending on April 6, 2016*) by Kenner in Pro Se – the following are some of the most outrageous and prejudicial “*testimonies*” from alleged victims in the case (*contradicted by evidence that the government possessed pre-trial and ignored*) – which prohibited the jury from viewing any of the evidence at trial without prejudice.

Secondly – the lies were so outrageous about “*non-disclosure*” and “*lack of knowledge*” (“***I don’t know***” &/or “***I don’t remember***”) responses by the alleged victims that the mere superfluous nature of the testimony distorted the jury’s ability to properly weigh any of their evidence – which was complete hearsay by the alleged victims (*when remembered*) – contradicting real evidence in the government’s possession for years – ***and deliberately allowed &/or suborned at every turn. The defense was forced to produce the government's evidence to refute the sheer blasphemy of the rehearsed witness testimonies to prove the foundationless hearsay proffers were UNTRUE.***

Please see the following reference reports with the details of the various witness and government frauds confirmed and substantiated by real evidence (*not hearsay*) against Kenner throughout the trial –

- *EDNY -- Gaarn – Standard Ventures Eufora Private stock ownership*
- *EDNY -- Gaarn issues report*
- *EDNY -- Mascarella issues*
- *EDNY -- Nolan issues*
- *EDNY -- Northern Trust Bank subpoenaed records*
- *EDNY -- Peca issues*
- *EDNY -- Sag Harbor issues*
- *EDNY -- Dixon-Myrick issues*
- *EDNY -- Jowdy loan disclosure issues*
- *EDNY -- Kaiser, Berard & Jowdy related issues*
- *EDNY -- Manfredi issues*
- *EDNY -- McKee issues*
- *EDNY -- Ranford issues*
- *EDNY -- Rucchin issues*
- *EDNY -- Sydor issues*

Prosecutorial Misconduct for Rule 33

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16. **PAGE 193** -- Sydor and Rucchin LIE about loss of collateral knowledge

17. **PAGE 194** -- The Tequila Red Herring – Government & Kaiser SUBORNED PERJURY

18. Komatireddy SUMMATION report

- a. **See R33 E -- Komatireddy SUMMATION report**

Prosecutorial Misconduct for Rule 33

Michiewicz calls Kenner a “liar” regarding “everything” in Kenner's testimony.

Michiewicz inserted his own feelings about Kenner's testimony after being frustrated by Kenner's testimony.

See R33 400 -- Michiewicz calls Kenner a “liar” despite SUSTAINED OBJECTIONS

Michiewicz' outburst was a result of Kenner refuting foundationless claims made by Michiewicz resulting in Michiewicz calling Kenner a “**liar**” multiple times on the witness stand (*despite clear and convincing real evidence in the government's possession*) related to –

- The 2004-06 Hawai'i loans to Jowdy (*which Jowdy admitted to in 2007, and 2010 in deposition and to the FBI*)...
 - ***Jowdy is now SHOCKINGLY referred to as a “co-conspirator” in Government October 2016 forfeiture summation report.***
- Kaiser being fully repaid from his \$1.1mm Hawai'i loan/investment in August 2005 (*Na'alehu Ventures 2006 bank records confirm this*)...
- Kaiser being fully repaid from his share of the CA Beach House renovation project profits (*Kenner and Kaiser bank records prove this – despite the government's suborned perjury regarding a “grocery list” clearly not belonging to Kaiser*)...
- Kenner's testimony about the **EDNY Grand Jury subpoena** to testify about Jowdy & Jowdy CFO Najam, and the termination of the same subpoena 10-days later (*without explanation – which was issued from Michiewicz' own office – and produced out of Rule 16 evidence by Kenner*)...
- Multiple claims by alleged victims that they were unaware of the “**loan buyout**” efforts of Eufora Plaintiff attorney Stolper (*despite overwhelming text messages between the parties and their collective desire to participate in the buy out personally – led by Berard, Kaiser and Gaarn*)...
- Multiple claims by alleged victims that they were unaware of the GSF use of funds (*despite signed authorizations from all contributors and specific text messages confirming the GSF conversations*)...
- Multiple claims by alleged victims that they were unaware of the loans to Jowdy in México (*despite previous 2009 testimony, 2009 affidavits signed by the LOC clients, and clear and detailed 2011 SDNY Grand Jury testimony*)...
- Kenner claims that the 2005 Lehman Brothers loan was not canceled to INSERT the expensive Urban Expansion loan (*despite Manfredi evidence refuting the foundationless government claims*).

Please note that from the government's Rule 16 discovery -- Kenner has provided overwhelming email, text, bank statements, signed bank documents, signed authorizations, etcetera that CLEARLY PROVE that each of the alleged victims who testified about the above

Prosecutorial Misconduct for Rule 33

matters PERJURED themselves in front of a knowing prosecution and FBI -- who sat idly by on each and every instance...and on most occasions assisted in the PERJURY thru leading and misleading RE-CROSS questioning to resuscitate their witnesses when they became incapable of following the pre-meditated government "storyline" &/or "pre-fabricated game plan"...

At no point in the trial – thru the Indictment &/or forfeiture has the government produced any proof of why ("intent") Kenner would have loaned funds to Jowdy WITHOUT any personal benefit, paid Constantine a consulting agreement WITHOUT any personal benefit, &/or violated the Hawai'i operating agreements – AGAIN WITHOUT a single benefit to Kenner.

- *Please note that the government has never turned over Kenner's original laptop with 100,000 PLUS emails and other evidence in addition to Kenner's iPhone with a myriad of additional evidence supporting 100% of Kenner's defense positions. **See Transcript 2141, line 16 thru 2144, and line 9.***

Michiewicz continued to badger Kenner about the 2004 Hawai'i loan agreement that Galioto and the government knew Jowdy had admitted in the December 2010 Nevada case as Jowdy's defense – thus authenticating it.

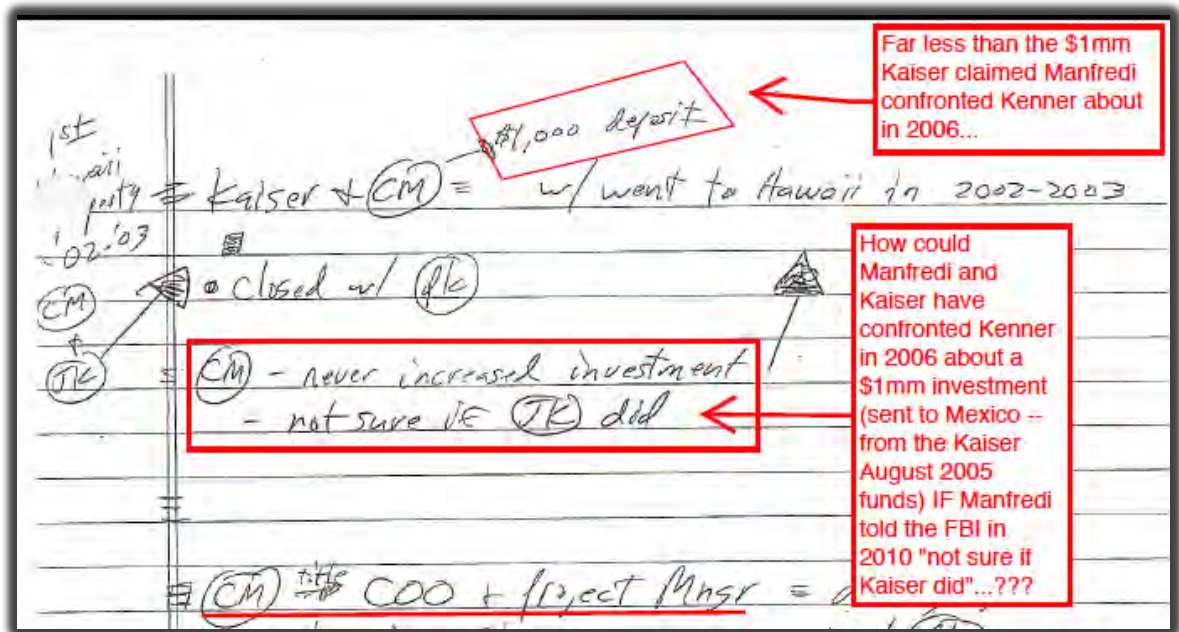
See R33 400a -- Michiewicz alleges Hawai'i loan agreement is a PHONY

See R33 666 -- In Nevada 2010 – Jowdy authenticates 2004 Hawai'i Loan agreement in trial defense thru signature witness Gaudet

*In fact – in an October 12, 2010 proffer with Kenner-adverse-party, Chris Manfredi – Manfredi told FBI agent Galioto that Constantine was being paid early by Kenner (thru the Hawai'i partners) – THUS – Manfredi was "**also**" aware of the multiple Constantine Consulting Agreements that Kaiser denied signing. Manfredi was clearly told by Kenner &/or Kaiser and nothing about the Consulting fees were concealed. Manfredi did not tell the FBI he was unaware of the fees to Constantine – just to the contrary...*

See R33 2006 -- 3500-CM-2-r

*In addition – Manfredi CLEARLY told the FBI that he and Kaiser made a \$1,000 deposit on the first \$720k, 258-acre parcel (and nothing more for their enormous equity stake in the entire 6000-acre subdivision) and Manfredi never increased his portion of the \$1,000 investment and "**was not sure if Kaiser did**".*

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The government -- specifically *Galioto* -- was present during the Manfredi proffer in October 2010. Thus -- they knew that Kaiser was lying to the EDNY in 2015 (5 years later) about the alleged Kenner fraud of loaning money to Jowdy in México unknown to Kaiser (*despite Kaiser's corroborating participation testimony in the Jowdy México loan during his 2009 arbitration testimony*) when Kaiser gave the following testimony --

6 Q And tell the members of the jury what you -- what, if
 7 anything, occurred that led to your discovery of what
 8 happened to the \$1 million?
 9 A At that meeting Chris Manfredi actually confronted
 10 Phil Kenner and he stated to him that the money that I
 11 sent, that was sent in '05, didn't go to Hawaii.
 12 Q What else did he say?
 13 A And then he stated that he went down to a development
 14 right in Cabo San Lucas in Mexico.

It is prejudiciously impossible for Manfredi to have been part of a 2006 alleged confrontation with Kenner about the additional \$1mm Kaiser investment/loan -- IF Manfredi was not aware of any additional investment Kaiser made during his 2010 proffer (4 years later). ***This was more planned and suborned perjury solely intended to deprive Kenner of a fair jury trial.***

After being verbally assaulted without foundational issues -- Kenner was forced to produce the EDNY Grand Jury subpoena from July 17, 2009 as well as the dismissal letter from the AUSA on July 27, 2009 the day after Michiewicz called Kenner a liar for alleging that the government "***dropped Kenner like a hot potato***"...

Prosecutorial Misconduct for Rule 33

See R33 400 -- Michiewicz calls Kenner a "liar" despite SUSTAINED OBJECTIONS

This subpoena was issued and terminated by Michiewicz's own EDNY office – thus he was fully aware of both – specifically in conjunction with Agent Galioto's EDNY efforts in 2009...

- Please note that a SDNY Grand Jury was convened on Kenner five (5) weeks after Kenner's original interview on June 24, 2009 – when Kenner confirmed to FBI agent Galioto that Jowdy had stolen, embezzled &/or misappropriated over \$25mm cash investments and loans from Kenner and his investors from 2002 thru 2009 (*still ongoing today*) thru –
 - ***Diamanté del Mar*** – about \$10mm investments,
 - ***Diamanté del Mar*** – about \$3mm KSI Capital hard money loan (*embezzled*),
 - ***Diamanté del Mar*** –\$500,000, 2004 loan from Norstrom (*and mailed a repayment check but never funded the payment – in the EDNY evidence*),
 - ***Diamanté del Mar & Diamanté Cabo*** – over \$2.5mm Jowdy capital accounts (*stolen*),
 - ***Diamanté Cabo*** –\$500,000 diverted from Glen Murray loan in NV (*adjudicated*),
 - ***Diamanté Cabo*** –\$100,000 diverted from Owen Nolan's investment in Cabo thru Baja Development Corp,
 - ***Las Vegas residence*** –\$412,000 diverted from Glen Murray loan in NV (*adjudicated*),
 - ***Diamanté Air planes*** – about \$1,500,000 from Gonchar, Kenner, Gaudet, Sydor, Stumpel, and Norstrom,
 - ***Diamanté Air planes*** –\$430,000 cash from Gonchar and Kenner from \$1.1mm loan guarantees fraud with First Source Bank (*stolen*),
 - ***Jowdy personal*** –\$1,600,000 from Stumpel loan to Jowdy in México,
 - ***Jowdy personal*** –\$125,000 from Gaudet loan to Jowdy in México,
 - ***Cabo Airport*** – about \$1.1mm from Kenner and Norstrom from stolen investment funds,

All of these Jowdy thefts and the underlying evidence to support the claims of thefts by Kenner have been in the government's possession since as early as 2009 – *including but not limited to Jowdy's own January 2010 confessions in his 2-day CA deposition forwarded by Kenner to Galioto in February 2010.*

Prosecutorial Misconduct for Rule 33

Please note that it was about nine (9) months after the Kenner SDNY Grand Jury began (August 2009) and during a trip to testify against Jowdy in a criminal proceeding in front of the State Supreme Court that Kenner was arrested in México.

- The arrest was constructed on a formal-written complaint thru PGR (*México's version of Homeland Security*) by Jowdy's USA and México attorneys as well as CA Attorney, Michael Meeks (*representing Nolan, Juneau, Moreau and Kenner's former assistant, Myrick*) – for ***Gun Trafficking Charges***.
- Kenner was held for three (3) days in a solitary confinement, dry cell without food and without amenities (*toilet, sink, bed, pillow, sheets, etcetera*), and endured physical assaults and torture from the officers (*while Kenner refused to sign transfer documents*) until Kenner's attorney, ***Ruben Palos***, arranged for Kenner's release thru his México City Federal contacts.
 - ***Kenner's attorney, Palos was murdered (shot in the back of the head) shortly after the Kenner release from the México prison.***

Prosecutorial Misconduct for Rule 33**Global Settlement Fund – McKee SUBORNED PERJURY**

Jay McKee –contributed \$250,000 on 5-11-2009 – after Constantine and Kenner met with McKee and his wife – 3-days earlier in Buffalo, NY during dinner at Chef’s restaurant. The meeting gave a broad yet detailed explanation of the issues surrounding the group of investors (*adverse to Jowdy*) as a whole with the global scope of issues related to the known and documented Jowdy frauds and the other individuals who were working alongside Jowdy and his attorneys (*referred to as “Bad Apples” throughout the trial – or “black sheep” by McKee in text -- below*).

McKee’s wife heard many of the issues with Jowdy and the others for the first time – ***since she was not a client of Kenner’s.***

Kenner – under the same operating rules as with the other wives (*or girlfriends*) of Kenner's clients -- had no fiduciary obligation to discuss financial information with her at any time – *unless specifically instructed to do so by Kenner’s clients.*

- Owen Nolan’s wife – Diana – was the one exception (*see EDNY -- Nolan issues REPORT -- on Pro Se admitted CD*).

After the May 9, 2009 meeting in Buffalo and before McKee contributed to the GSF – Kenner, McKee and Constantine (*typing on Kenner’s phone while Kenner was driving to the next GSF meeting*) had the following communication –

In fact – Michael Peca was aware of the GSF trip to Buffalo, NY to meet his former teammate and close friend Jay McKee – the day after Kenner and Constantine met with Michael Peca in Columbus, Ohio (*on 5-8-2009*). McKee and Michael Peca were in constant communication personally. Anything that was discussed with Peca would have been shared with McKee and vis-versa regarding the GSF meetings before McKee contributed.

- Please note that Michael Peca actually received the GSF accounting from Kenner and McKee (*as Peca testified to in the EDNY*).

703 0	+1716374 3234 Michael Peca*	5/9/2009 12:28:48 AM(UTC+0)	Read	<i>Hope the trip was a good one to Buffalo.</i> Have you seen the lease docs from my brother yet. Does it all check out?	
----------	--------------------------------------	--------------------------------	------	---	--

After the Buffalo, NY GSF meeting – McKee began a series of follow-up texts with Kenner to make sure he understood everything related to the GSF plan.

See R33 401 -- McKee GSF confirmation texts BEFORE McKee contributed to the GSF

Without a doubt after the thoroughly laid out GSF plans thru texts obviously corroborating everything that was discussed in the meeting (*also per the texts*) – McKee decided with his wife to contribute to the Constantine-led GSF efforts.

Prosecutorial Misconduct for Rule 33

Then – Kenner finished up the conversation on the phone with McKee for clarity...considering McKee's math was as bad as Juneau's (*related to his Hawai'i investment calculations in 2006*)...

On 5-18-2009 – after the series of texts during the prior week and multiple conversations between McKee and Constantine (*post-meeting*) -- McKee responded the same day to the GSF Authorization sent by Kenner to McKee.

See R33 402 -- GSF-McKee acknowledgment & approval - GSF documents

See R33 402a -- McKee GSF letter with Ron Richards (Constantine CONTROLLED)

See R33 402b -- Richards Bar Complaint response (led by Jowdy's attorneys)

- Please note that Constantine stipulated during the EDNY that he was 100% in control of the GSF. ***See R33 402c -- Constantine stipulates that he has controlled all GSF transfers***

See R33 402d -- Bianco suggests no GSF conspiracy since Constantine in full control

Despite all of the communication between Kenner and McKee as well as Michael Peca and McKee -- *not accounting for any communication with Constantine directly* -- McKee gave misleading and untruthful testimony at the EDNY trial – fully prejudicing Kenner (& Constantine)...

See R33 403 -- McKee PERJURES himself to the EDNY re – GSF knowledge

The misleading comment about the “***Authorization email response***” would only leave his wife to have responded to the authorization email (*if not him*) – so does that create a criminal action if his wife responded unknown to him? The government's question and McKee's answers misled the jury to believe that the email response was a fake...***further prejudicing the jury.***

Prosecutorial Misconduct for Rule 33

Sydor GSF perjury regarding his previous yet ignored ownership interest in the Falcon 10 airplane

Similarly – *Komatireddy induced Darryl Sydor's false, perjured and misleading testimony about the GSF proceeds* – Sydor attempted to **DENY** his desire (*specifically*) about the Falcon 10 airplane that was part and parcel to the general settlement issues -- due to the Jowdy (& others) frauds against the group as a whole. Sydor's attempt to distance himself from the known uses of the GSF was another planned perjury by Sydor and the government.

Now – in the prepared LIE perpetrated between the government and Sydor – Sydor claims that he would not have contributed to the GSF either -- ***"if he read the whole authorization"*** which he returned – blaming it on his BlackBerry – if he knew there were expenses going to the Falcon 10 airplane – that ***"he wanted nothing to do with"***.

See R33 404 -- Sydor PERJURES himself about "wanting" to be part of the Falcon 10 airplane

Sydor's testimony could make sense about – ***"what Sydor wanted or did not want to be involved in"*** -- **EXCEPT** – Sydor was a \$250,000 investor in the Diamanté Air LLC **since 2004** and already a 10% owner of the Falcon 10 jet -- *so the GSF efforts to recover the plane that Jowdy defaulted on was to his own benefit...*

See R33 405 -- Diamante Air REAL Oper Agmt PRE Jowdy FRAUD (page 3)

Sydor is CLEARLY involved in the Falcon 10 (*since his 2004 deposit*) – as evidenced in the original Diamanté Air LLC operating agreement (*page 3*). This original operating agreement was the management document for Diamanté Air before Jowdy fabricated a fake Diamante Air operating agreement to facilitate stealing an additional \$430,000 from the Diamante Air partners thru the loans that Kenner and Gonchar guaranteed.

- *The \$430,000 theft by Jowdy from the First Source Bank loans occurred after Jowdy stole the initial \$800,000++ from Kenner, Norstrom, Gonchar and Sydor in 2004 when Jowdy LIED about buying the Falcon 10 jet (which did not occur until over a year later with the fraudulent loan funds).*

See R33 049 -- Jowdy Diamanté airplane multi-million dollar thefts

- *These were MORE CLEAR FRAUDS OVERLOOKED BY Galioto and the GOVERNMENT TO PROTECT Jowdy and the "cover-up" theories about no Jowdy frauds throughout the EDNY trial – falsely echoed by Kaiser denying all Jowdy wrongdoings. Obviously based on the evidence in Galioto's hands – **Jowdy had robbed Kenner and the Kenner investors** – despite the government's proffers to the contrary throughout the EDNY trial – further prejudicing Kenner.*
- *In 2016 – after 6 months of preparation of the government's summary report to the Forfeiture Hearings – the government actually referred to Jowdy as a **co-conspirator** – thus at least for the corroboration of the "**Jowdy is a thief**" issue – confirmed Kenner's (and Constantine's) trial defense.*

Prosecutorial Misconduct for Rule 33

This Diamanté Air operating agreement was received from First Source Bank and was in the government's possession confirming the Sydor ownership interest in the Falcon 10 thru Diamanté Air LLC.

This was another poorly orchestrated LIE by the government using Sydor as a "pawn" ...

See R33 406 -- Sydor and Kenner meet in Texas to discuss GSF before open communication with Sydor's best friend --Tyson Nash

During this same period of time – Tyson Nash also signed an identical affidavit (to Stumpel, Norstrom, Gonchar, Murray, Peca, Lehtinen, etcetera) for the Nolan case ***confirming his knowledge of the Hawai'i loans to Jowdy*** as well as the ***Little Isle 4 LLC's obligation to pay monthly LOC fees*** (as part of the overall Hawai'i LLC expenses) using funds from the LLC. Nash's affidavit was never turned over after the government search and seizure of Kenner's office for some unknown reason.

See R33 408 -- Nash confirms affidavit for Kenner-Nolan arbitration

See R33 407 -- Stumpel affidavit

The Gonchar, Norstrom, Stumpel, and Lehtinen affidavits were recovered...***confirming knowledge of the Jowdy loans and the use of funds to pay monthly expenses – including the LOC fees to Northern Trust Bank on behalf of some of the investors in Hawai'i...***

Succinct with Sydor's FRAUDULENT "***NO AIRPLANES***" claims in the EDNY (above) – Sydor forgot that his GSF response was NOT JUST -- "***acknowledged and approved***" as requested by Kenner – ***BUT*** – that he "***totally understand everything***"

See R33 409 -- GSF-Sydor acknowledgment & approval -- GSF docs

Why would Sydor (or anyone) say –

"Yes I totally understand everything. Thx Darryl"

--IF-- they –

"...didn't read the whole email."

(See EDNY testimony below -- As Sydor told the EDNY six (6) years later?)

See R33 410 -- Sydor claims he never saw the GSF authorization that he vehemently responded to...

Did Sydor truthfully claim that he didn't recall seeing this or was Sydor prepped to circumvent the truth? – Further insinuating another alleged email "***scam***" by Kenner?

- This misleading response is disconcertingly analogous to the McKee (doesn't remember the GSF authorization email response) &/or Berard and Kaiser (claiming

Prosecutorial Misconduct for Rule 33

that they did not write emails that were sent from their own personal email addresses)...

Prosecutorial Misconduct for Rule 33

Michael Peca CONCEALMENT of GSF purpose -- recover UNPAID loans from Jowdy et. al...

Michael Peca and Jay McKee were in contact with one another after their respective meetings to discuss the GSF issues that were discussed as well as the GSF strategy – thus there was total awareness and an ability to confirm what was spoken about in both meetings.

Led by Michiewicz – Michael Peca claimed he was unaware of the “***used***” GSF proceeds but in an email correspondence between himself and Ronald Richards about the March 2011 appearance – Michael Peca NEVER asks why he cannot use the GSF proceeds &/or what happened to them.

See R33 411 -- Peca \$8k email for SDNY trip (without GSF complaint)

See R33 402b -- Richards Bar Complaint response (led by Jowdy's attorneys) - bottom page 4

The government in their two (2) summations at trial and thru their response to the Constantine Rule 29 and Rule 33 motions quote their own rhetoric that the Pecas would not want anything “***more***” to due with the Palms in May 2009 (*when they agreed to the GSF – despite what the Authorization email disclosed to them*).

- ❖ The statement is foundationless and further inflammatory – ***cunningly proffered by Komatireddy*** -- since Michael Peca seemed to be excited for the project and at the same time Kenner was making the \$15,000 per month mortgage payments (*upholding Kenner's end of the agreement*), while Kristen Peca was keeping the approximate \$15,000 revenue checks per month from the Palms from Kenner (*because Michael Peca would not confront her with the terms of the agreement with Kenner*).
- ❖ Kristen Peca was about \$60,000 in the positive (& ***ultimately \$90,000 by the time Kenner cut off the payments due to the ongoing Peca breach***) for the Palms by the GSF meeting in May 2009.

See R33 412 --Peca-Kenner Palms agreement (Peca breach)

- ❖ Kristen Peca was unaware of the Northern Trust LOC issues as concealed by her husband – while Michael Peca was holding 100% title to the Palms Penthouse valued at approximately \$5mm at the time (***on a \$3,300,000 purchase price***).
- It is not possible that Kristen Peca was “***fed up***” as the government portrayed in May 2009. ***Kristen Peca would have been thrilled!***

From Komatireddy's summation re – the GSF contribution (*page 6005*) --

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17	hangars; resold, long gone. <u>Not for the Palms Condos</u>
18	<u>which Kristin Peca told you they were never involved with.</u>
19	<u>They were fed up with the Palms Condos. Not for any other</u>

-- **It WAS COMPLETELY ABSURD, FOUNDATIONLESS & PREJUDICIAL** --

In fact – in a further act by Michael Peca to conceal investment information from his wife (*after the closing*) – and despite the fact that Michael Peca had been in communication with Kenner about the joint venture in Vegas for months (*pre-closing*) without his wife's knowledge -- Michael Peca went to visit the Las Vegas unit without his wife -- as follows –

5916	+17163743 234 Michael Peca*	3/12/2009 2:00:32 AM(UTC+0)	Read	Going to Vegas for NHLPA Mtgs. Mid-end of june. Staying at the Belagio, but looking forward to checking unit out.
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- ❖ Please note that this text is immediately ***after the first Northern Trust DEFAULT letter*** (which Kenner notified Michael Peca about - below) – despite the government's selective and misrepresented audio recording excerpt with Kenner and Peca's wife, Kristen Peca, when Kenner apologized for her husband not telling her about the Northern Trust LOC default (*not Kenner*).

6350	+17163743 234 Michael Peca*	2/10/2009 8:13:58 PM(UTC+0)	Sent	<i>Northern Trust sent you a letter. Call me when you get it</i>
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- ❖ This visit to Las Vegas was ***after Peca had already collected over \$60,000 in revenue checks*** from the Palms in Las Vegas without sending the funds to Kenner per their written agreement – because Michael Peca claimed he could not get the checks (*revenues*) from his wife since she watched their checking account.
- ❖ How could Kristen Peca be ***"fed up with the Palms"*** at that time?

Michael Peca fraudulently testified to in the EDNY while being led by Michiewicz that he was not aware of the ***"multiple"*** uses of the GSF proceeds despite both he and Kristen Peca responding separately to the GSF authorization form with all of the use of proceeds clearly defined by Constantine.

See R33 414 – GSF – Michael Peca SIGNED Acknowledgment & Approval

See R33 413 -- GSF-Kristen Peca acknowledgment & approval

Prosecutorial Misconduct for Rule 33**See R33 415 -- Michael Peca fraudulent and PERJURED testimony re – GSF proceeds**

But immediately after the meeting – Michael Peca sent Kenner the following text asking about the “**two companies**” – which would have been the Airpark and Eufora – since the Falcon 10 would have been referenced as “*the airplane -- and not a company*”).

704 2	+1716374 3234 Michael Peca*	5/9/2009 2:04:59 PM(UTC+0)	Rea d	<i>Make sure I get a statement of somekind to where my \$250k is going. How much in ea of the two companies. Thanks</i>	
----------	--------------------------------------	-------------------------------	----------	--	--

Nonetheless – neither Kristen Peca nor Michael Peca had an issue with the authorization form they independently returned to Kenner and Constantine after they were satisfied with all of their follow-up questions and answers.

- Please note that that meeting to discuss the use of proceeds with Michael Peca and Kristen Peca took place the day before (*confirmed via text with Michael Peca's close friend Jay McKee – who also gave Michael Peca the GSF accounting sheet*) they were discussed with Jay McKee and his wife. McKee confirmed full knowledge via text with Kenner (*above*).

Again – as McKee was clearly aware of the buyouts of the “**three black sheep**” (*via text below in his own words*) – where else would McKee, Michael Peca and or any other contributor to the Constantine-led GSF believe the funds were coming from for the “**buy outs**”? It is illogical at best...(**Kenner responses in RED**)

704 3	+1716803490 3 Jay McKee*	5/9/2009 2:12:22 PM(UTC+0)	Rea d	Hey, also, could u email me what the 3 black sheep are getting in the end result, as well as Tommy bullet points they had 2 agree too.. Tks	
826 9	+1716803490 3 Jay McKee*	5/9/2009 2:32:11 PM(UTC+0)	Sent	Tommy said you will get 1/10th of everything that is acquired of theirs which includes 20% (2% for you) of the <u>airpark building</u>, 1/10th of their 3.64% of their Eufora shares (.364% for you which puts you just over 1% in <u>Eufora</u>) and then a small piece of the <u>jet</u> which TC is still crunching numbers on but it will probably be 1% of it.	
827 0	+1716803490 3 Jay McKee*	5/9/2009 2:35:46 PM(UTC+0)	Sent	TC will send you the bullets they agreed to but has to wait till it's actually signed. Should be a day or two. They have only agreed by email so far. He will also send you the media summary but he wants you to convince the owner of Chef's to send	

Prosecutorial Misconduct for Rule 33

him the tomato sauce Fed Ex.

- Ultimately – Michael Peca claimed to the EDNY that he was never told where his GSF proceeds were spent – but later (*on CROSS*) confirmed that he did receive the GSF accounting from a friend (*McKee*), which showed specifically how Constantine used his proceeds. At no point after reviewing the GSF proceeds accounting from Kenner did Michael Peca, McKee &/or any other GSF contributor raise a proverbial “**red flag**” with Kenner or the myriad of various attorneys representing the group related to the Jowdy frauds.

See R33 416 -- GSF proceeds of Michael Peca & Jay McKee as delivered to each of them by Kenner

By this point in time – it is clear what Michael Peca’s GSF proceeds were used for and that all of “**his**” funds had been spent. It is not possible that Michael Peca thought “**he**” had funds left in the GSF when he had to pay Ronald Richards \$8,000 for his NY appearance at the SDNY Grand Jury in March 2011 – ***NOR DID Peca CLAIM THAT TO THE SDNY Grand Jury.***

Upon receipt of the authorization email – that Michael Peca confirmed had “**information he was not told during the meeting**” – neither Michael Peca nor Kristen Peca DEMANDED their GSF funds back...&/or further explanation of the UNKNOWN elements of the GSF...

Michael Peca – from the above GSF accounting – was 100% aware that considerable funds (*about \$500,000*) that were spent on attorneys related to Jowdy alone – BUT Michael Peca again LIED to the EDNY –

Peca - Direct/Mr. Miskiewicz

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5 Q. And other than that one lawsuit, which was dismissed
6 without prejudice, do you know if any money was spent in
7 the litigation?
8 A. No.

Michael Peca confirmed that his wife’s email was the one that responded to the 2nd authorization letter – as follows –

3 Q KMPGP@aol.com, as you indicated a moment ago was your
4 wife’s e-mail address?
5 A Primarily her e-mail address, correct.

Prosecutorial Misconduct for Rule 33

Despite the misleading EDNY testimony of Michael Peca and Kristen Peca about their lack of GSF knowledge – Michael Peca sent Kenner a text on 5-9-2009 – the day after their Columbus, Ohio meeting – requesting information on two (2) of the GSF “***extra deals***” (*Eufora and the AZ Airpark*) leaving no question of Michael Peca’s awareness.

See R33 417 -- Michael Peca COMPLETE knowledge of GSF proceeds for Airpark and Eufora

After the multiple text and phone communications between Kenner and Michael Peca over the ten (10) days since the face-to-face meeting – Kristen Peca also responded to the GSF Authorization letter requesting additional information but never demanding the return of their deposit.

Kristen Peca’s response was generated to Kenner as a result of the GSF authorization email to Kristen Peca and Michael Peca five (5) hours earlier. Kristen Peca had 100% and unconcealed knowledge of the expected “***use of funds***” for their GSF contributions – despite her and Michael’s misleading EDNY testimony.

See R33 418 -- Peca GSF questions

Thus – in the two (2) days that passed between Kristen Peca’s requests for the GSF information – the Pecas received the information they needed to corroborate ***EVERYTHING*** that was written in the GSF authorization letter that apparently both Michael Peca (*signed*) and Kristen Peca (*via email*) returned independently.

- Please note that Michael Peca was the ONLY person who decided to *sign* the GSF authorization in lieu of a simpler email response that his wife sent independently two (2) days later...

See R33 414 – GSF - Michael Peca SIGNED Acknowledgment & Approval

See R33 413 -- GSF-Kristen Peca acknowledgment & approval

Prosecutorial Misconduct for Rule 33***“No knowledge of Hawai’i loans to Jowdy” and “collateral seizure in advance”***

- Michael Peca***

One month prior to the May 8, 2009 GSF meeting – and only one month after Michael Peca spoke to the people at Northern Trust on April 1, 2009 to confirm the seizure of collateral (*see below*) -- apparently Michael Peca decided to NOT tell his wife but rather conceal the investment decision to pay off the LOC in April 2009 – and pursue Jowdy thru litigation (*as mentioned below – with – “Let’s get this done soon”*)...

Kenner responses in RED

6325	+17163743234 Michael Peca*	4/1/2009 10:44:43 PM(UTC+0)	Read	Got it. <i>Call already done.</i> Was this the plan b/c it makes sense to pay the line off or b/c the the loan defaulted? Honestly	
7420	+17163743234 Michael Peca*	4/1/2009 10:45:12 PM(UTC+0)	Sent	100% better to pay off!	
6326	+17163743234 Michael Peca*	4/1/2009 10:47:24 PM(UTC+0)	Read	Ok. <i>Let’s get this done soon.</i> Also, on top of the line I had towards Hawaii, <i>I also had \$200k cash in too.</i> <i>Correct.</i>	
7423	+17163743234 Michael Peca*	4/1/2009 11:03:43 PM(UTC+0)	Sent	Text me when free	

Michael Peca was asking Kenner about how the legal process versus Jowdy was going so we can get our Capital Accounts paid back with the unpaid Jowdy loans (*thru litigation*) – just like he confirmed to the SDNY Grand Jury in March 2011 and in subsequent text messages with Kenner.

See R33 419 -- Michael Peca confirms knowledge that all LOC funds were in his capital account and belonged to the LLC – not himself personally...

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24	Q	When you signed those papers, where did you
25		think that money was going?
26	A	It was going to a Capital account for Little

ALSO -- Michael Peca reinforced his capital account knowledge via texts -- *below*.

Each LOC investor knew -- as Michael Peca testified -- that their funds were immediately committed to the Little Isle 4 Capital Account...and not subject to any further discussions about the specific use of their funds versus the use of the funds by Little Isle 4 -- and governed by the Little Isle 4 operating agreement -- which authorized "loans".

See R33 303 -- 2004 Little Isle 4 By-Laws-PKHOME-00011897

Michael Peca also was confused in 2009 between the \$200,000 cash he had invested in the Diamanté Cabo project (*in 2005-06*) as opposed to the \$100,000 cash he had invested in the Hawai'i project (*in 2005*). Clearly -- with his memory "**misremembering**" in 2009 -- there is *reason to pause* regarding Michael Peca's memory about specific knowledge of anything that he "**was**" or "**was not**" told -- when he testified 6 years later during his EDNY testimony.

In fact -- on the 2012 recordings by Michael Peca of his 1 hour conversation with Kenner -- Michael Peca claimed that he did not remember two critical details of specific issues related to his PERJURED 2015 testimony.

See R33 419a -- Michael Peca NO MEMORY in 2012 of signing Authorization despite 2011 SDNY testimony

Peca had the unabated opportunity in March 2011 to tell the Kenner SDNY Grand Jury that he had no idea about the Jowdy loans, OR his wife was **shocked** about Kenner's non-disclosure of the default, etcetera...& was 100% defrauded...but **Michael Peca did not!**

The day his wife's email account received the email from Northern Trust about the LOC payoff -- Michael Peca sent Kenner the following text re -- ("**f'n loose it**") --

6851	+171637 43234 Michael Peca*	5/1/2009 5:57:01 PM(UTC+0)	Read	Get in touch with Glen yet. Also, NT sent an email to my wifes aol acct. Attached is the transfer info. She's going to f'n loose it when she sees loan paid
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One month after the LOC collateral was seized -- Michael Peca clearly had concealed the LOC seizure from his wife.

- This text from Michael Peca to Kenner was only 1 ½ hours after Kenner reassured Michael Peca also via text that Kenner expected the litigation with Jowdy to be the catalyst to repay the Hawai'i loans to Jowdy (*in México*) -- see below.

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- ***Please note that these text conversations were occurring before Constantine approached Kenner with the concept of the GSF – thus confirming that Kenner was already in litigation in México, Nevada and Arizona with Jowdy for the benefit of the various investors with Jowdy and his underlying frauds against the Kenner investors – and Michael Peca was aware of it!***

See April 1, 2009 texts (*above*) where Kenner and Michael Peca discuss the payoff of the LOC after the default...

“Call already done (with Northern Trust banker). Was this the plan b/c it makes sense to pay the line off or b/c the loan defaulted?”

Earlier that day -- Peca confirmed that he knew his LOC contributions were investments in his own Capital Account for Hawai'i. This was 1-month AFTER the seizure of his collateral. This is the same “**capital account**” Michael Peca referred to in his SDNY Grand Jury testimony (*See R33 419*), which he knew was used to send a **short-term loan to Jowdy for México** –

6843	+171637 43234 Michael Peca*	5/1/2009 3:00:52 PM(UTC+0)	Read	<i>I'll be great when the <u>Hawaii capital accts</u> are paid back. Any news there?</i>
8040	+171637 43234 Michael Peca*	5/1/2009 3:39:08 PM(UTC+0)	Sent	<i>Just slowly moving thru the process. We have to get all the other legal hammered out in the meantime. We are making great progress versus Jowdy. <u>That will lead the rest of the deals like the Hawaii loans, etc</u></i>

There can be NO MORE ambiguity about the fact that (*at least*) Michael Peca knew that his LOC contributions were counted 100% towards his Hawaii Capital Account and litigation was going on in Arizona to recover the unpaid loans – as opposed – to being a short-term loan to Little Isle 4 OR still funds that belonged to him (*as the government incessantly misled the jury*)... repayable in 6-months...despite telling Kenner thru his 5-1-2009 text that his wife was going to “**fn loose it**” (*above*) because Northern Trust notified her about the LOC collateral – which Michael Peca clearly had not.

Michael Peca deleted that email and kept it from her until she saw the Northern Trust bank statement some time in late May or early June 2009 – long after the 5-8-2009 GSF meeting in Columbus, Ohio.

In fact – Peca asked again a month later about his “**capital account**” – without telling Kenner he knew nothing about he LOC usage &/or Kristen Peca's anger about the DEFAULT – as follows –

13	+1716374	6/13/20	Rea	Call me when can to catch up and update me with	
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Prosecutorial Misconduct for Rule 33

84 1	3234 Michael Peca*	10 8:03:26 PM(UT C+0)	d	anything new (<i>Mex and Hawaii capital acct</i>)	
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During the EDNY – Michael Peca lied to the jury about receiving any funds (*returns from the Hawai'i deal – despite the LOC collateral seizure*).

See R33 420 -- Michael Peca LIES about receiving funds from Hawai'i

Despite Michael Peca's fraudulent and misleading claim – Peca had received a wire into his Charles Schwab account for **\$42,553** in August 2006 as well as a deposit against his LOC account for **\$555,571.12**.

Peca received \$598,124.12 RETURN in August 2006. This is far more than – “*I have not*” ...(***See R33 420***)

See R33 421 -- Michael Peca received about \$600,000 in proceeds from the 2006 Lehman Brothers Hawai'i closing...

Michael Peca claimed that he was unaware of the Hawai'i loans to Jowdy in 2009 despite his SDNY Grand Jury testimony to the contrary et. al..

See R33 419 -- Michael Peca SDNY confirms knowledge that all LOC funds were in his capital account and belonged to the LLC – not himself personally...and LOANS to Jowdy...

- This is corroborated also by Sydor's 2011 SDNY Grand Jury testimony when specifically asked if he thought he was going to receive the return of funds from Jowdy when the Hawai'i loans were paid back. Sydor CLEARLY confirms that the Hawai'i LLC – not himself personally – were expecting to receive the repayment funds from the Jowdy loans.

See R33 467f -- Sydor confirmed to the SDNY Grand Jury that he knew Little Isle 4 owned the funds he signed to invest through his LOC...

Now – Kenner sent Peca another Hawai'i loan disclosure in the following text (5/1/2009) the same day and just **prior** to Michael Peca realizing that his wife's AOL account received a **PAYOFF** email (*prompting the Michael Peca text -- “fn loose it”*) for the LOC – which put Michael Peca in a panic.

8040	+1716374323 4 Michael Peca*	5/1/2009 3:39:08 PM(UTC+0)	Sent	Just slowly moving thru the process. We have to get all the other legal hammered out in the meantime. We are making great progress versus Jowdy. That will lead the rest of the deals	
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Prosecutorial Misconduct for Rule 33

				<i>like the <u>Hawaii loans</u>, etc</i>	
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Michael Peca was also aware of the loans to Jowdy via email with Kenner and his disclosure letter with his Hawai'i attorney, Tom Baker.

See R33 422 -- Michael Peca LIES to EDNY re – knowledge of Hawai'i funds &/or returns

See R33 423 -- Peca Sept 2009 "Jowdy loans" email

See R33 A -- Baker Little Isle 4 Disclosure letters

➤ ***See Michael Peca (Letter)***

Without question – Michael Peca was aware of the use of funds from the LOC (*notwithstanding his repeated text communication and emails with Kenner – to his wife's email account*). Michael Peca (*by 2009*) was represented individually by Tom Baker in AZ suing Jowdy for the “**Jowdy loans**” in Arizona, as well as Ronald Richards in CA also suing Jowdy for the loans and embezzlement in the two (2) México projects...

Michael Peca signed and initialed every page of the Baker disclosure letter about the litigation since 2008 related to the UNPAID Jowdy loans from Hawai'i.

See R33 424 -- Michael Peca signed and initialed Baker disclosure with CLEAR Hawai'i loans to Jowdy language

Michael Peca and Kristen Peca also had direct email communication with their CA attorney (*without Kenner cc'd*), Ronald Richards, about the Jowdy litigation in CA via email – thus no CONCEALMENT or RESTRICTIONS from information – *and certainly not by Kenner*.

Michael Peca and the rest of the Hawai'i and México investors had complete **TRANSPARENCY** and **INDEPENDENT** communication with their attorneys engaged in 2008-09 litigation versus Jowdy for the UNPAID Hawai'i loans and other embezzlement issues.

See R33 425 -- Peca and Richards GSF-Jowdy emails

Please note that Kenner is NOT COPIED on this email from Ronald Richards to “**his clients**” discussing the merits of meeting with Jowdy face-to-face about the Plaintiffs' claims in the two (2) CA lawsuits about the Jowdy unpaid loans and projects embezzlements, etcetera...

How could Michael Peca &/or any of the México and Hawai'i investors CLAIM to be restricted by Kenner from any information related to the Jowdy loans etcetera – as they did in the EDNY with the government's deceptive questions and corresponding misleading answers?

Despite Peca's 100% access to each of his attorneys who were legally opposing Jowdy for his UNPAID loans and other frauds from 2008 thru present – Michael Peca went on to LIE to the EDNY about his knowledge of his use of funds.

Prosecutorial Misconduct for Rule 33***See R33 426 -- Michael Peca LIES to EDNY about GSF meeting***

Michael Peca's testimony claimed that the meeting with Constantine about the GSF discussed the **pending** CA litigation to recover the Hawai'i loans – **which Michael Peca previously denied to the EDNY** – as well as the results from a 2010 mediation that did NOT even occur for another nine (9) months.

The testimony was outrageous – similar to Michael Peca telling the EDNY that the 2011 stock market problems in 2011 were the reason he wanted his 2006 bond account “**as a safety net**” ...five (5) years earlier – thus another pre-programmed confirmation mix-up.

24	Q	This bond account, what did it represent to you, how
25		important was it?
Peca - Direct/Mr. Miskiewicz		
		385
1	A	It was, I think in all essence it represented our
2		safety net. You know, when the stock market after 2011
3		became fairly unpredictable. And it was our safety net.
4		It really was.

5 years before the event? This testimony cannot be serious!

Michael Peca's testimony was so rehearsed and got blundered by Michael Peca that no trier of fact could have reconciled the statements and the timing of what he was trying to explain without future prejudice to Kenner.

In a calculated and prejudicial approach -- Michiewicz then opened up the question to the jury challenging the authenticity of Constantine's call with potential investor and partner, Robert Sonnenblick, as a charade.

See R33 427 -- Constantine \$15m Sonnenblick "cash out" deal - who JOWDY SUED (page 7)***See R33 428 -- Michael Peca – Sonnenblick LIES during EDNY***

So – after Michael Peca tried to get answers from Kenner about the loss of LOC collateral and allegedly could not – Michael Peca and Kristen Peca decided to contribute \$250,000 to the GSF efforts – **for what?**

It was **more clear and calculated misconduct**...considering that fact that Michiewicz and Galioto were 100% aware of the Jowdy litigation in CA versus Sonnenblick (*by Jowdy*) and the other Sonnenblick related efforts to buy the Cabo loan and assist the Kenner investors in “**getting whole**” on the voluminous Jowdy thefts since August 2002 – all ignored by the government and Galioto, specifically.

See R33 429 -- Kline efforts with Sonnenblick to buy Cabo

Prosecutorial Misconduct for Rule 33

Michiewicz misled the jury again with Michael Peca's testimony about the \$11mm equity (*that was already in the deal*) to claim that Michael Peca was not aware of who was supposed to come up with additional funding – thus the problems were not solved.

See R33 430 -- Michiewicz misleads the EDNY jury with Michael Peca about the \$1mm equity already in the Cabo project

From R33 427 equity table –

Equity Table (Example)	Project Requirements
TC&A Equity	\$11,300,000
SI Danske Note Acq.*	\$35,000,000
SI Settlement Costs	\$15,000,000
Brokerage Fee**	\$1,250,000
Closing Costs	\$150,000
	<hr/>
	\$62,700,000***

* Projected Figure
 ** Fee calculated as a percentage (2.50%) of new equity to be paid by TC&A
 *** Actual cash requirement excludes \$11.3m of TC&A equity contributed to JV

To be paid out of the closing to reimburse all of the Kenner investors -- so YES -- "their troubles would have been OVER..."

The \$11.3mm was the CREDIT given to the Kenner investors already in the deal -- with NO NEW FUNDS required by Kenner's investors...

The footnote CLEARLY represented that the \$11.3mm is already counted in the deal...

The GSF meeting in Peca's OHIO living room would have been the PERFECT situation to discuss the issues related to the LOC? Kristen Peca was allegedly **SHOCKED** only one month or so before that meeting (&/or was going to "*fn loose it*" 7 days earlier)...which has been CONTRADICTED by Kristen Peca's own 2012 phone call to Kenner and other supporting evidence as another designed, deliberate and premeditated LIE...

M. Peca - Direct/Miskiewicz	
	460
1 Q	And as you sit here today, do you know whatever
2	happened to that money?
3 A	I have ideas but I don't know for certain.

Michael Peca was later forced in CROSS to confirm he received the GSF accounting from McKee (*above*)...

Prosecutorial Misconduct for Rule 33

Then Michiewicz led Michael Peca to claim no knowledge of his 2008 Eufora purchase from Constantine Management Group – despite the GGA and Schwab protocols ***requiring*** Peca (*and all client's verbal confirmation prior to releasing funds – despite Kenner's Power of Attorney request*)...

See R33 431 -- Michael Peca EDNY LIES about 2008 Eufora purchase from Constantine Management Group

The funds could not have been released from Michael Peca's Schwab account – even with Kenner's Power of Attorney – unless Michael Peca verbally confirmed the fax request (with Constantine Management Group as the payee) to his financial advisor – Jim Graham – separate and apart from Kenner. This protocol was the same even if Michael Peca himself sent the fax.

Otherwise – the funds would not be transferred under any circumstances...

- This protocol was CLEARLY aware to the government and IGNORED throughout EVERY instance they attempted to claim investors were NOT AWARE of the transfer of their funds and the payees.
- September 9, 2010 -- Galioto interviewed Kenner's former assistant (*and loser in the Kenner slander and defamation lawsuit against her in 2008-09 – also working hand-in-hand with Nolan's attorney, Michael Meeks and Jowdy*).
- In the FBI proffer (*after losing in the Kenner litigation and failed cross-claim*) -- Myrick told Galioto that Jim Graham – the clients financial advisor ***REQUIRED*** to see all of the wire transfers ***BEFORE*** they could be sent as follows during her September 9, 2010 FBI proffer (*while 100% adverse to Kenner after her termination "for cause" and civil loss to Kenner*) --

See R33 432 -- Kenner's former assistant (and adverse party) confirm 3rd party wire confirmations necessary for client transfers

- The financial advisors would email a second copy (*the 1st having been sent by Kenner to the clients*) of the fax transfer request for the client's records...
- Galioto was CLEARLY aware of this five (5) years before the allegations were made at trial – ***EXCLUSIVELY to mislead and prejudice the jury...***

See R33 659a – CRITICAL LIES -- Michael Peca confirmations and contradicting lies about the access to his Northern Trust LOC

Other LOC clients of Northern Trust made similar outrageous claims of their lack of knowledge with respect to the "***Use of LOC funds***" as follows –

See R33 659g – CRITICAL -- Nolan LOC perjury

See R33 659b -- SYDOR LOC perjury

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See R33 659c -- Berard LOC perjury

See R33 659d -- Rucchin LOC perjury

See R33 659e -- Glen Murray LOC confirmations – and lack of memory

See R33 659f -- Gonchar LOC perjury

Prosecutorial Misconduct for Rule 33

Gaarn stock sales – “Not Kenner’s stock”

The court (*throughout the EDNY trial and at sidebar -- below*) was misled by the prosecution about the Gaarn Eufora private stock sales – ***by commenting on Kenner selling his shares*** – *as well as during multiple leading Q&A’s and proffers by the government throughout the trial...*

10 THE COURT: Couldn't it be guilty of aiding and
11 abetting Mr. Kenner in his duty as a financial advisor if
12 both of them know that the players aren't being told that
13 they are selling their shares in Eufora? He is aware of
14 that and working with Mr. Kenner. Why can't it be aiding
15 and abetting Mr. Kenner's omission of telling the players,
16 by the way, Mr. Constantine and I are getting rid of our
17 shares in Eufora. So it could be through an aiding and
18 abetting theory.

No evidence was presented in the EDNY that the shares were “***Kenner’s shares***” &/or “***their shares***” (*implying Kenner and Gaarn’s*)...

Gaarn testimony throughout the EDNY was that he did not conceal &/or participate in a fraud with Kenner related to “***Gaarn***” selling his Eufora shares.

See R33 433 -- Gaarn confirms to the EDNY that he doesn’t believe he committed a crime with Kenner

Komatireddy both misled the EDNY Court with questions to Sydor about his knowledge of “***buying shares from Kenner***” – *which was foundationless* – and reiterated the falsity in her Rebuttal Summation – leaving that LIE and dozens of other fabrications UNCHECKED by the defense.

In nine (9) months of phone calls that Gaarn recorded for the FBI in 2012 with Kenner – Gaarn never asked Kenner about selling shares that were owned by Kenner. In fact to the contrary – Gaarn only asked Kenner about his concerns for paying taxes on the shares that “***Gaarn***” sold. The government was 100% aware of the recordings and their respective contents.

The Eufora private stock shares that were sold in 2008-09 were not “***their shares***” (*Kenner and Gaarn’s*) – they were “***Gaarn’s shares***” -- since the transfer agreement in 2005. Every email between Constantine, Gentry &/or Gaarn related to the books & records of Eufora corroborate the transfer to Gaarn in 2005 -- *not later (below)*.

From Gaarn at EDNY –

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In a surreal position of NO KNOWLEDGE (*another government theme*) – Gaarn claimed he has heard of K-1s but not really sure what they are despite his previous employment at Morgan Stanley (*confirmed to the FBI thru proffer*) and being paid as a NYC broker and deal maker – thus receiving partnership interest from Eufora (& other private companies)...

See R33 434 -- Gaarn lies about no K1 knowledge

Amazingly – (*and not counting his Eufora K-1s – below*) in a March 19, 2010 email between Eufora CEO Gentry and Constantine (*during the Stolper, Gaarn and Gentry investigation of Eufora -- prior to the AZ litigation being filed*) – Gentry tells Constantine they need to file the K-1s for 2008 and 2009 ***at Gaarn's request*** --

See R33 435 -- EM 2009 03 22 From CR to TC on Equity - Operating Account - Loan amount with updates

It states –

Tim Gaarn has been requesting that Eufora sent out the K1's for 2008 and 2009. They are already very late and we (and AZ Eufora) are incurring fines by the IRS on this.

In fact –after working on the “***Books & Records***” of the Eufora -- Gentry confirms to Constantine that he has confirmed -- *to the best of his knowledge* -- the correct ownership in Eufora ***after speaking with Kenner (2005 and before) and Gaarn (2005 forward)*** – as follows –

I have attached an updated AZ Eufora Partner I LLC membership log (AZ Eufora Partners I Members – CURRENT Post Adj through Dec 31 2009.xlsx. **It is based upon the information related to transactions that I received from Tim (2005 forward), Phil (2005 and before) and from you.** I also reviewed the incoming wires to Eufora LLC that was provided to me by Mia and reviewed the Alliance bank account since September 2009. I have made the adjustments you had requested for 12/31/07 and 12/31/09 and it now balances to the Eufora Membership log that I sent you last week. I have marked the major changes in a “green” color. I have also attached the original member log prior to your adjustments (AZ Eufora Partners I Members – CURRENT.xls) should you want to compare. The original spreadsheet does NOT balance to the Eufora membership log that I sent you last week nor does it balance to the 2005/2006/2007 tax returns. Because we made Pro-Rata changes to the NEW AZ Eufora membership log that reduced their ownership in Eufora LLC to correct these differences, we need to document the reason why they were made. **Tim Gaarn, as managing member of AZ Eufora Partners I LLC will need to approve the changes and this should be done in writing.** If Tim and/or Eufora is asked why the changes were done by any of the members AND/OR the IRS, we need to have the reason documented. I know you hate to hear it but it is our fiduciary responsibility to do this.

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None of this information that Gentry (& Gaarn) transmitted with Constantine appeared to conceal or lack the proper intent to confirm that Books & Records of Eufora in 2009 (*post private sales by Constantine and Standard Ventures (Gaarn) prior to the litigation and during the investigation by Stolper*).

In addition – in April 2009 -- Constantine signed an affidavit (*see R33 433e -- Constantine declaration "no Kenner Eufora interest since 2004"*) confirming that Kenner transferred his shares out of Constantine's Eufora Company in 2005 and has not been a partner since then.

The only "Eufora shares" Kenner had at the time (*in 2008-09*) were the future shares Constantine promised to transfer to Kenner for the "**grocery list**" loans after Constantine took back the two (2) Vegas Penthouse deposits (*about \$650,000 each*) as collateral in exchange for the 20% Eufora stock transfer promise...

- Please note that Constantine had actually had his AZ attorneys (*Quarles & Brady*) draw up collateral partnership agreements confirming Kenner was receiving the Constantine Vegas deposits (*from Constantine's LLC – PPP56*)—

See R33 436 -- Vegas PPP56 Prom Note to Kenner from Constantine

NOW – at the EDNY -- Gaarn testified that he was **not aware** of anything illegal that he did with respect to the sales of his Eufora stock at any time – with Kenner.

Why would there be a fraud in selling shares – since Kenner's representation to everyone -- from before the time of the Gaarn sales -- was that Constantine owed Kenner 20% of the Eufora from his own stock position (*for the "grocery list loans" – with at least 10% evidenced in the December 2009 meetings with Kaiser – and 12% in the follow-up August 2010 operating agreement offer by Constantine*)...

- Please note that Constantine's equity was represented on the **Eufora 2007 tax returns** as **INDIVIDUAL** and **49%** of the company.

See R33 437 -- Eufora Tax Return 2007 (page 18)

Thus – Kenner had no concerns about Constantine's ability to deliver the equity once Constantine changed the collateral agreement for the "**grocery list loans**" from the Las Vegas Penthouse(s) to the Eufora equity...

Notwithstanding the 2007 Eufora tax records signed by Constantine (***See R33 437 -- Eufora Tax Return 2007 (page 2)***) -- Kenner was shocked in 2012 – when as part and parcel to Constantine's AZ bankruptcy filing – Constantine neither listed Kenner as a "**debtor**" (*despite the \$2mm in advance "grocery list" loans*) nor himself as an owner of Eufora – **now all mysteriously owned by his step-mother, Sue Ellen Ferguson (thru the 2002 Trust)** – BASED ON an **alleged** April 2003 transfer and an outrageous "**buy back**" provision --

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The Debtor has the right buy back for the outstanding balance, currently of \$9,643,056.19, the (then 50%) interest he had in Eufora LLC that he transferred to the 2002 Trust, Sue Ellen Ferguson, Trustee, in April 2003. (The interest has been diluted since the transfer).

-

Unknown

CBKR-00000391

Kenner was forced to file an adverse proceeding versus Constantine to secure the interest promised by Constantine for the "***grocery list loans***".

See R33 438 -- Kenner adverse proceeding

Kenner was FORCED to file an adverse proceeding versus Constantine's AZ bankruptcy to protect his interest in the "***grocery list***" loans &/or the disappearing Eufora equity.

- Please note that Kenner also filed about nine (9) other adverse proceedings for his clients for similar reasons on the same day...
- Despite Kaiser's claims in the EDNY of the equity Constantine allegedly owed Kaiser – from the fabricated "***grocery list***" story thru Michiewicz – Kaiser never filed against the Constantine bankruptcy to protect his alleged \$2mm interest...which was ***NOT LOGICAL***...
 - This is the same mystifying "***non-legal-action strategy***" that Kaiser has engaged with respect to his purported ownership of Kenner's Baja Ventures 2006 equity in México – *valued at over \$100,000,000 from December 31, 2009 thru Kenner's Indictment.*

Constantine attempted to settle with Kenner thru the general Eufora mediation efforts and the AZ Eufora Partners I plaintiffs represented by NY Attorney Stolper by transferring 12% of Eufora to Kenner's LLC – Triple Black Diamond.

See R33 439 -- EUFORA LLC_DE_ Operating Agreement dated as of 08-05-2010 (page 43)

The August 2010 offer to Kenner for the "***grocery list***" loans settlement came nine (9) months after Kaiser confirmed thru his independent meetings with Constantine that Constantine was going to get Kenner -- ***at least the first 10% in December 2009.***

See R33 440 -- Constantine confirms first 10% of transfer to Kenner for "grocery list" loans

Constantine desperately tried to get a hold of Kenner -- via phone and text. Kenner was not talking with Constantine because of the Eufora share issues and the GSF expenditures unknown to Kenner and the other investors (*when executed*) – ***BUT*** Constantine wanted to

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tell Kenner that he agreed with Kaiser (*a few days earlier on how he was going to transfer at least 10% of the shares to Kenner*).

See R33 441 -- Constantine desperate attempt to contact Kenner after meeting with Kaiser and initial 10% share agreement

And ultimately – ***Gaarn independently signed a new Eufora operating agreement in February 2010*** (*about ½ way thru his private stock sales*) – confirming the transfer of shares from his Standard Ventures LLC to AZ Eufora Partners I.

This is in EDNY evidence -- despite the government's claims that there were ***NO RECORDS*** of the investor's equity (*which ultimately was Gaarn's responsibility both as the Managing Member of AZ Eufora Partners I and as a Eufora Board Member -- not Kenner's*)...

See R33 055a -- Feb 2009 Eufora Operating Agmt w Gaarn & Constantine ownership (page 35 & 37)

See R33 055b -- Eufora Tax Return 2007 (page 24 & 26)

Face-to-face (*and apparently unknown to the FBI*) -- Gaarn and met Kenner in October 2012 for Gaarn to warn Kenner about the antagonistic and hostile nature of Agent Galioto towards Kenner and defense of Jowdy (*during a Kenner trip to the East Coast*).

Gaarn told Kenner ***"in person"*** that the FBI (*Galioto*) told him that they would ***"wash"*** his drug related issues (*from Gaarn's trucking business*) -- *but he had to testify against Kenner after Galioto got an Indictment IF Kenner went to trial.*

Gaarn was not sure of Galioto's timing -- since Gaarn told Kenner that Galioto was frustrated that he ***"struck out"*** in the SDNY a year and a half earlier (2011).

Gaarn claimed to Kenner that Galioto told Gaarn he would not stop until he ***"got Kenner"*** and ***"protected Jowdy"***. Galioto told Gaarn that the reason Kaiser and Berard went to work for Jowdy – was because Galioto told them he personally would never let Kenner win versus Jowdy. If they wanted to see any of their money – they had to support Jowdy versus Kenner and help Galioto ***"put Kenner away for good"***...

Gaarn was ***PANICKED*** for Kenner based on the statements from Galioto about getting Kenner indicted – ***"if it was the last task he did for the FBI"***.

Gaarn told Kenner that Galioto told him over and over that he would ***NEVER*** let Kenner win against Jowdy. Galioto would see to it with all of his ***"FBI powers"***.

At the end of the face-to-face meeting with Gaarn in October 2012 – Gaarn told Kenner that he should ***NEVER*** mention on the phone, email &/or text that they had met in person on the East Coast...***Gaarn was SCARED (personally and for Kenner)***...

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On one of the many 2012 phone calls between Kenner and Gaarn – Gaarn expressed his concerns to have to pay taxes on his stock sales – and NEVER mentions the sales as Kenner's – even on the FBI recorded calls – BECAUSE Gaarn knew that Kenner would have **BALKED** at the false notion immediately.

From June 2012 -- @ about 5:25 (of the recording) -

Kenner – Look – every transaction that I have done is clean – ok – we don't have a transaction problem – there is NO FRAUD in any of it – including the – the one you're talking about – OK? –

Gaarn – uh-huh...

Kenner – There is NO FRAUD -- There is NO FRAUD in those transactions – that was a – that was a –

Gaarn – Yeah I know – that's – I was worried about just about – ya know – the income – ya know?

Kenner – no – no – no – I know.

In the FBI recorded call when Kenner addressed the transaction of the Gaarn private stock sales – Gaarn **NEVER** tells Kenner – "Yeah BUT those were not my shares – they were yours" – BUT INSTEAD – Gaarn tells Kenner he is worried about **"his income"** – AGAIN – NOT Kenner's INCOME...

And again @ about 12:20 (of the recording) --

Kenner – They (IRS) are looking for fraudulent transactions that are criminally based.

Gaarn – OK (sighs)...

Kenner – You had every right to sell your stock – OK?

Gaarn – Uh-huh...uh-huh...

Kenner – You sold it – you sold it – at a valuation that was corroborated by Brent Nerguizian's loan that they did at the same value to the company (Eufora)

Gaarn – Uh-huh...uh-huh...

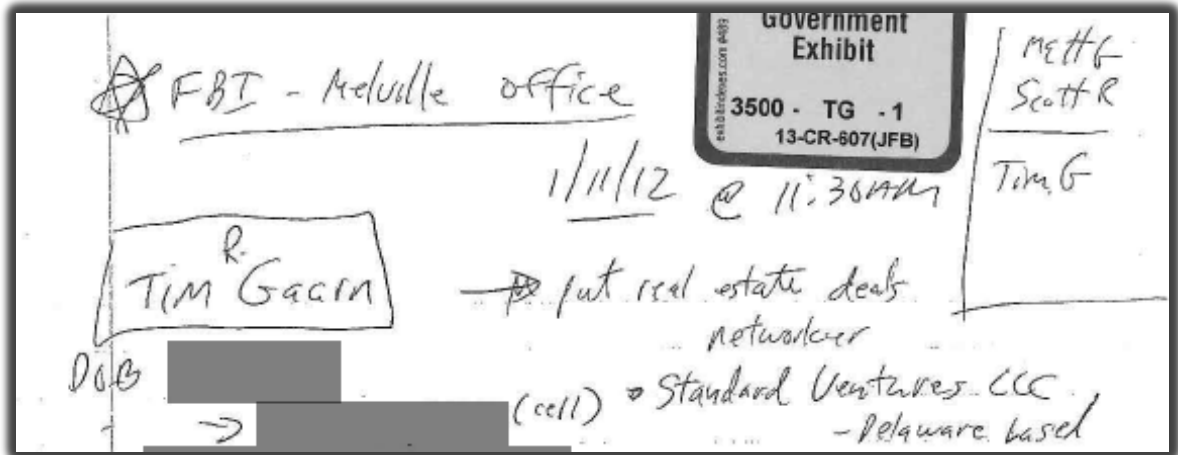
With every opportunity to confront Kenner – Gaarn never does attempt to support the 2015 government theory that the stock was actually Kenner's &/or that the investors were not aware...

Gaarn communication with Kenner related to drug transportation issues – further explained on the phone after the incidents...

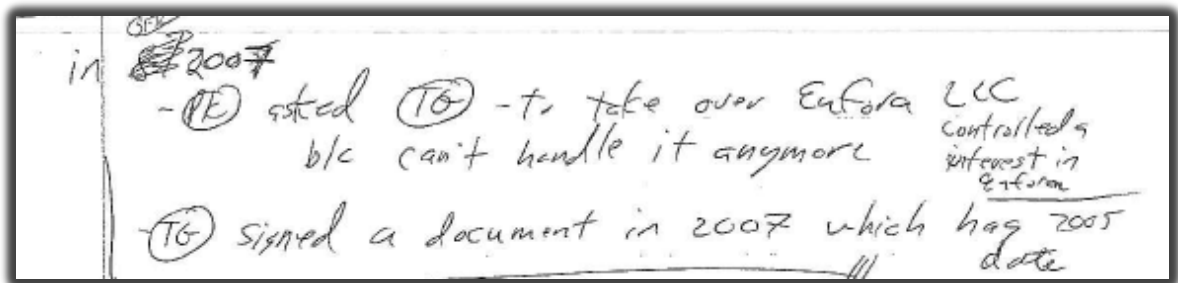
See R33 442 -- Gaarn drug arrest issues – washed by Galioto

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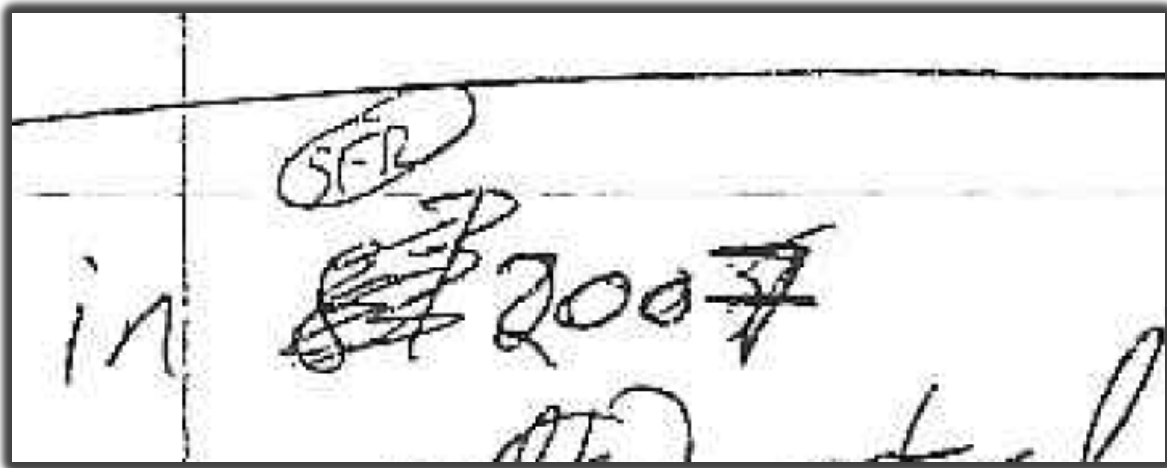
Gaarn told Kenner that he had to claim that the deal with Kenner to transfer the Eufora shares to Standard Ventures occurred in 2007-08 – **NOT in 2005** like he originally told the FBI in January 2012 (see below – before someone attempted to change the evidence)...



2007



BUT -- at 400% -- originally 2005 like Gaarn told them -- NOT 2007-- as the 2005 cannot be the most ironic coincidence in this case...

2005...
not
2007...

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Then – in order to complete a “***motive***” for the alleged fraudulent Gaarn stock sales (*after deceitfully insinuating directly that they actually were Kenner's stock – and not Gaarn's*) – Komatireddy claimed that Kenner was ***broke*** during her rebuttal summation – when that was the furthest from the truth – specifically at that time.

See R33 653 -- Komatireddy LIES about Kenner being BROKE in 2008-09

- Please note that Kenner's October 31, 2008 bank account at Wells Fargo had a balance of \$473,000 (*and more in his other US bank accounts*) and over \$1.4mm in his México bank account.
- Kenner earned over \$400,000 in 2008 and over \$300,000 in 2009 ONLY in his Standard Advisors consulting business (*and not counting any other revenue stream of Kenner's at the time*).

This gross misrepresentation of the known truths (*including claiming Kenner's Wells Fargo bank accounts were empty – BUT due to Agent Galioto shutting them down with planned subpoenas and phone calls to Wells Fargo – confirmed to Kenner by the Wells Fargo legal department after 20 years of banking with them*) – left the jury with no alternative but to view Kenner as a desperate man – *which was never the case through the day of Kenner arrest.*

In fact – contrary to Kaiser and the government's representations throughout the EDNY trial – Kenner had no debt to any other partners by the time of the Gaarn sales and Komatireddy's claims of Kenner being broke as a motive – especially since Kaiser had been fully repaid in Hawai'i (*by August 2006*) and from the CA Beach house proceeds by mid 2008 (*per Kaiser's own representations throughout the Kenner lawsuit versus Kaiser and Berard in AZ for fraudulent conveyance (aka...theft) of title*).

Kenner's assets also totaled into the millions – far in excess of any underlying mortgages &/or debt on the respective properties. On its own – the rebuttal summation representations by Komatireddy could not have left the jury with any picture other than “***guilt***”.

In fact – before Berard and Kaiser stole the AZ renovation project from Kenner – Kenner continued to fund the ***\$30,000+*** per month renovation budget personally thru the completion in late 2010. In addition – in May 2010 when the LedBetter (*Sag Harbor*) property fell into tax re-conveyance unknown to Kenner &/or Kaiser -- *due to an mailing address issue* – Kenner wired the ***\$28,500*** to Kaiser to pay for the taxes (*because Kaiser and Berard were BROKE – see below*).

It was not Kenner in 2010 that was broke as Komatireddy slandered Kenner in her rebuttal summation. It was the government's two star witnesses; Kaiser and Berard. Even though Berard told the EDNY that after the “***alleged phone call from Northern Trust that told him he lost his collateral (which never happened)***” – he had lost all trust in Kenner.

If that were actually true – unbelievably Berard still had Kenner working for him a year later on international tax matters that a multitude of other people could have been doing for

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him – but he chose Kenner – his “**Bro**”. This was at the same time that Berard confirmed he was going **BROKE** as follows –

122 81	+1401524 6929 Bryan Berard*	2/23/20 10 6:58:54 PM(UT C+0)	Rea d	Hey talked with Dave Norris today (Cdn Accountant). Can we please get him those 07 08 09 returns. That's all he needs. Then they can try to rush for me. He said he thinks will b JUNE b4 get this \$.. <i>That Won't work. I ll b outta cash here n abt 2 months... Thanks. Unless we sell oil. ha. Or sell house in PV.</i>
122 82	+1401524 6929 Bryan Berard*	2/23/20 10 7:18:25 PM(UT C+0)	Rea d	<i>Thanks bro. Just a little stressed don't wanna run outta \$</i>

Berard refers to Kenner as “**Bro**” – which contradicts a person he does not trust for allegedly scamming him out of \$1mm in collateral a year earlier. Also – please note that Berard references selling the “**house in PV (Arizona)**” with Kenner. This also contradicts all of the Kaiser and Berard defenses in the fraudulent conveyance of title lawsuit – **cv2012-000576** – that Kenner filed in Pro Se after Kaiser and Berard stole the title from Kenner and tried to sell and keep 100% of the proceeds (***just like their already completed crime in the Sag Harbor-LedBetter deal***).

Kenner ultimately was forced to sue them in 2013 when Kenner discovered Kaiser and Berard sold the Sag Harbor property with a fabricated and forged operating agreement (***see R33 055c - FAKE Ledbetter Operating Agmt (made by Kaiser and Berard for THEFT & SALE)***). Both cases were forced into dismissal – *costing Kenner over \$1mm in personal losses* – due to Kenner's incarceration at the leadership hands of Kaiser and Berard in EDNY.

See November 13, 2013 NY Daily News article about Kenner arrest (by the perseverance of Galioto, Kaiser and Berard).

From the time that Komatireddy told the EDNY that Kenner was desperate and broke -- Kenner was routinely transferring funds to Kaiser's bank account to pay for Kaiser's personal monthly bills. In the one year period of time (*after the timeframe of the “Kenner is broke” denigration and vilification from Komatireddy*) – Kenner arranged for over \$165,000 to be sent to Kaiser as additional loans from Kenner (*still and OBVIOUSLY UNPAID by Kaiser*).

All of these transfers (*after the alleged date of Kenner being BROKE*) are in the EDNY evidence held by the government pre-trial – but they chose to ignore all of it – to “**shoe-horn**” their foundationless theories together.

- *Atrociously – the \$165,000 plus of transfers all occurred after the December 31, 2009 date that Kaiser and Jowdy claim Kenner DEFAULTED on a personal guarantee to Kaiser (more forged and fabricated documents by Kaiser, Berard and Jowdy – and the underlying theme to their FBI assistance to Indict Kenner and halt all adverse legal efforts in the USA and México) fraudulently granting Kaiser 100% control of Kenner's*

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Baja Ventures 2006 equity (worth over \$100mm by December 2009) and Kenner's GuideDog LLC (which grossed over \$200,000 in 2010 alone).

- *The hard-copy documents are available to the court upon request*
- *After the alleged default date (December 31, 2009) -- Kaiser never took any legal &/or formal actions to acquire the alleged collateral prior to Kenner's Indictment.*
- *In addition – if Kenner had truly defaulted on these alleged guarantees (which were first discovered by Kaiser 6 months **after** Kenner was arrested and detained in the EDNY) – why would Kenner have continued to transfer funds to Kaiser (after the DEFAULT and after he was “broke”) – who then would have owned thru DEFAULT two of Kenner's most valuable assets?*
- ***It is so illogical that it defies any applicable common sense.***

From prison in 2015 – Kenner was forced to send Najam, Jowdy and Kaiser the following letter that ***received no response*** (as soon as Kenner was made aware of the third successive fraudulent transfer attempt by Kaiser, Berard and Jowdy since they began working with Agent Galioto to Indict Kenner) –

January 15, 2015

*Diamante Cabo san Lucas, LLC
131 Deer Hill Avenue, Suite B
Danbury, CT 06811*

Re: Baja Ventures 2006, LLC

Dear William J. Najam Jr.:

Recently, I received a copy of a shocking letter dated April 21, 2014, apparently prepared by you for the benefits of John Kaiser and signed by Ken Jowdy regarding the transfer of shares of Baja Ventures 2006, LLC, a 39% member of Diamante Cabo san Lucas, LLC.

*The letter refers to the Jowdy “**authorized**” transfer of shares held in a Delaware LLC which neither Jowdy nor you (Najam) have authority to approve transfers for. I (Kenner) am, and have always been, the sole Managing Member of record of Baja Ventures 2006, LLC from the inception of the Limited Liability Company in February 2006 until present. The management position in the LLC has never been transferred or conveyed at any time since its inception by me, thus, there could be no authorized transfer of shares without my approval under any circumstance.*

*Under Section 1.4 Tax Matters of the Baja Ventures 2006, LLC Operating Agreement dated March 2, 2006, Philip A. Kenner is named the sole “**Tax Matters Partner**”. No authorization to transfer that role or the role of the Managing Member of the LLC has been presented to Diamante Cabo san Lucas, LLC by Kenner to authorize any change at any time since inception of the LLC. Thus, in contradiction to the Jowdy signed letter of April 21, 2014 **Re: Baja Ventures 2006, LLC**, all tax reporting by Diamante*

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*Cabo san Lucas, LLC with respect to the 39% equity interest held by Baja Ventures 2006, LLC must continue to be mailed to: **Baja Ventures 2006, LLC c/o Philip A. Kenner**, at its address of record: **10705 East Cactus Road, Scottsdale AZ 85259**.*

In addition, I demand that whatever changes occurred as a result of the April 21, 2014 letter signed by Jowdy for the transfer benefit of John Kaiser be immediately reversed, properly documented by Diamante Cabo san Lucas, LLC and yourself as Counsel of record, and all tax documents for the LLC be sent or re-sent to the proper address, as well as the proper changes within the Diamante Cabo san Lucas, LLC tax returns for 2010 to present. Also, the proper updates need to be immediately re-sent to the IRS for notification of the changes. I request that the changed and updated Diamante Cabo san Lucas, LLC tax returns from 2010 to present be forwarded to me at the Baja Ventures 2006 address of record, as well, for confirmation.

If Mr. Kaiser believes that he has a reason to state a proper claim to any portion of the equity in Baja Ventures 2006, LLC, he needs to take that matter up with the Manager of the LLC, Philip A. Kenner. Kaiser's arbitrary and unauthorized request to have you and/or Jowdy transfer shares of an LLC not legally under your management control will be handled in an appropriate manner and reported in a proper forum.

If any damages to me (Kenner) and/or Baja Ventures 2006, LLC have occurred due to the fraudulent transfer of equity as a result of the April 21, 2014 letter, which I believe was prepared by you and/or Jowdy and signed by Jowdy, will also be addressed in an appropriate forum.

I request under your fiduciary role to the members of Diamante Cabo san Lucas, LLC, you respond to this request and immediately rescind any and all actions that you have undertaken as referenced by the April 21, 2014 letter.

Please copy Ronald Richards at PO Box 11480, Beverly Hills CA 90213 with your reply.

Sincerely,

*Philip A. Kenner
Managing Member, Baja Ventures 2006, LLC*

*Cc: Ronald Richards
John Kaiser*

Ironically – it was only months after the Kenner tax payment for the LedBetter property that **Berard and Kaiser forged Kenner's girl friend's name (Lauren Gilmore) on a fake and fabricated LedBetter operating agreement** (also in the government's possession) – which was also highlighted by them in 2014 by submitting it to the defense as part of their alleged “early trial” documents on a disk titled “**BINDER-###**”.

Then – Kaiser and Berard **stole** the Sag Harbor property thru the forged and fabricated LedBetter documents and retained the proceeds – including defrauding Tesoriero (*EDNY witness – confirmed in his FBI proffer to Galioto*) all after their collective efforts began working with Jowdy and Galioto versus Kenner in 2011.

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See R33 055c - FAKE Ledbetter Operating Agmt (made by Kaiser and Berard for THEFT & SALE)

By 2013 – Gaarn had completely disengaged from Kenner – and Kenner’s mother whom Gaarn had sold \$25,000 of stock in another private company to five (5) years earlier and had failed to transfer the memberships. Kenner's mother could not get an answer from him to complete the transaction – even years after Gaarn had received the \$25,000 transfer.

Gaarn’s repeated PROMISES to transfer the stock she purchased from Gaarn were finally and completely IGNORED now that Gaarn was scared and working with Galioto – ***immediately after their early October 2012 face-to-face meeting.***

Kenner sent a series of texts to Gaarn as follows about the \$25,000 THEFT from Kenner’s mother – considering Gaarn refused to turn over the purchased stock now five (5) years later and was knowingly working with Galioto.

See R33 443 -- Gaarn ignores the \$25,000 he stole from Kenner's Mom and refused to transfer shares

As part of the government’s fraudulent claims about the Gaarn stock sales from Eufora – the government attempted to drag the FAKE thefts from Kaiser (*from the CA Beach house proceeds*) into the “reason” (or “intent”) for the transfers to Kaiser (*in Counts 2, 3 and 4*). The government claimed that the UNPAID CA proceeds to Kaiser were the reason Gaarn transferred money to Kaiser in February 2009 from the Gaarn stock sales.

Since this is not true (***see R33 B -- Kaiser \$1.7mm REPAYMENT back-up records***) – the government’s theory of Counts 2, 3 and 4 are false – and most likely were also misrepresented by Galioto to the EDNY Grand Jury in the Superseding Indictment in 2015.

Kaiser was fully repaid from the CA project long before the February 2009 transfers by Gaarn to Kaiser. The following texts confirm that the funds were actually loans that Gaarn and Kaiser “***worked out***” in person a month earlier when they were face-to-face in AZ – both residing at Kenner’s home...

- ***Thus – the underlying government proffers to the court about why these three (3) EDNY transfers occurred were simply fabricated with Kaiser to create an EDNY jurisdiction...***

In January 2009 – during his Eufora meetings as a Board Member of Eufora and the Managing Member of AZ Eufora Partners I -- Gaarn flew to Phoenix to meet with Constantine and Eufora CEO – Gentry. These are certainly not the actions of a person who was simply taking the word from Kenner and acting as a puppet – as the government portrayed Gaarn during his testimony.

Gaarn discussed his plan to sell additional stock during the meetings in AZ.

See R33 444 -- Gaarn and Kaiser arrange for loan between them in February 2009 after Gaarn and Constantine discuss Gaarn selling more Eufora shares

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Regarding the 2nd loan from Gaarn to Kaiser – without any evidence that the wires (for Counts 2 & 4) were mistakenly sent to Kaiser and then demanded by Kenner to be returned to Kenner “**as a mistake**” – Kenner sent Kaiser spoke via text and phone **BEFORE** the wire was sent to him from Gaarn.

See R33 445 -- Kaiser, Gaarn and Kenner discuss 2nd transfer BEFORE it occurs – thus no mistake

- Please note that Gaarn sent two (2) transfers on the same day (February 25th, 2009) to Kenner (for \$30,000 – to repay more of the original-previous Kenner loans to Gaarn) and Kaiser (for \$40,300).

The next day – after Kaiser received the 2nd loan from Gaarn – Kaiser wired Kenner the funds for the AZ renovation project expenses – which Kenner managed.

There is no logic at all that would cause Kenner to “**wash or otherwise**” some of the Gaarn sales proceeds thru Kaiser – on two (2) separate occasions in February 2009. It is purely NONSENSICAL...

See R33 446 -- Kenner's new Bank of America account – With deposits from Gaarn and Kaiser

During the same timeframe (February 2009) – Kaiser sent Kenner the following text confirming that he sent a K1 tax document request to the Managing Member of the Hawai'i project, Alan Worden (due to Worden's ignorance of his partners – with Kaiser as Managing Member of the Baja Ventures 2006 JV, non-controlling 50% partner – for over a year at this point – since December 31, 2007).

Kenner asked Kaiser to send the K1 request –

6475	+16312350308 John Kaiser*	2/17/2009 4:57:17 PM(UTC+0)	Sent	Please send the request forth k1 to alan	
------	------------------------------	-----------------------------	------	---	--

And Kaiser responded with no mention of the “**alleged**” email Kenner typed on his computer “**without his knowledge**” (per EDNY testimony) –

5506	+16312350308 John Kaiser*	2/17/2009 7:04:20 PM(UTC+0)	Read	Tks ! Sent Alan email ref/K1. Jk	
------	------------------------------	-----------------------------	------	----------------------------------	--

Most **critical** is that Kaiser sends the request to Worden as part of the email chain that Kaiser told the EDNY Kenner “**wrongfully**” went onto his computer and sent a previous message to Worden unknown to Kaiser.

Where is the message from Kaiser asking – at a minimum – WTF is up with this other message that you sent &/or why didn't Kaiser just start a new email if he was unaware of the email allegedly sent by Kenner as Kaiser and the government alleged to the EDNY jury?

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It was more prepared slander between Michiewicz, Galioto and Kaiser to maliciously and dishonestly undercut Kenner's believability with the jury.

See R33 447 -- COMPLETE Kaiser & Worden email re- Milestones

Despite the following outrageous and slanderous testimony – and the fact the government did not show the entire email string at trial – **recently discovered by Kenner** – Kaiser NEVER mentions the alleged Kenner interaction (*email*) to Worden &/or the FBI in any 3500 proffer materials pre-trial.

Kaiser planned and contrived testimony from the EDNY trial –

7 Q Did this letter that you say was generated on Phil
8 Kenner's computer, once again, does it also express the
9 dissatisfaction with the failure to meet the milestones, yes
10 or no?
11 A I never said it was generated on Phil's computer.
12 Q I'm sorry. Whose computer -- you're right. Is was
13 generated on your computer, is that correct?
14 A Phil typed it on my computer and sent it to Alan Worden.
15 Q With or without your knowledge?
16 A Without my knowledge.

The remainder of the email string (*recently discovered*) – *continued for more than another month* -- without Kaiser claiming to Worden that he did not write the first email, confront Kenner about the unknowingly sent email – nor did Kaiser report it to the FBI (*during any proffer session pre-trial*)...

3 months later – Kaiser did give testimony in the Nolan Arbitration where he confirmed –

7 Q. Even now, sitting here in May of 2009, is there
8 anything that you've uncovered, as someone that obviously
9 knows how to investigate, that Mr. Kenner has done anything
10 inappropriate throughout these transactions?
11 A. No.
12 Q. Not one complaint?
13 A. None.

- ❖ Please note that this was a **FORGERY THEME** that Berard and Kaiser attempted to continue with Agent Galioto's cover-up in their AZ civil case defense (*originated by Jowdy, Harvey and Meeks*).

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- ❖ Fortunately -- the AZ judge saw thru Berard and Kaiser's LIES due to more underlying evidence contradicting their fabrications.

See R33 055e -- AZ ruling -- Kenner v Kaiser (excerpts below)

In the AZ case -- Berard claimed that his signature and the notary stamps were forged by Kenner.

See R33 448 -- Berard FORGERY claims in October 9, 2014 deposition -- AZ case

Berard (& Kaiser) continued their FORGERY claims during the 2015 AZ trial. Berard and Kaiser were found to be not credible by the AZ judge. Despite the fact that Kenner could not testify in the AZ case (*because of the contemporaneous NY Criminal case -- led by Galioto, Kaiser and Berard's multiple false claims*) -- Kenner and Berard exchanged texts about the signed and notarized document from Berard to Kenner.

EDNY government witness Lanie Donlan's signed the alleged ***FAKE NOTARY of WILLIAM MEDLIN*** in MA on April 24, 2008. Berard ***ACTUALLY*** sent Kenner the following text *confirming* that Berard was in Boston (*in "Southie" with Donlan*) at the time of the document notary --

442	+1401524 6929 Bryan Berard*	4/21/2008 2:00:09 AM(UTC+0)	Read	<i>Boston is killn my liver!!!!!! Lol. U gotta come here worst is I'm even hangn in southie</i>
-----	--------------------------------------	--------------------------------	------	--

See R33 449 -- Berard & Donlan notarized Power of Attorney

Agents Galioto and Wayne actually interviewed Donlan about the alleged AZ Power of Attorney claims by Berard. Despite Donlan's nondescript response to the document -- ***for no logical reason*** -- no follow-up interview notes ever occurred with the MA notary, William Medlin.

See R33 450 -- 3500-LD-2

- Please note that this is the same EDNY government witness who claimed that Kenner had FORGED (*or traced*) about 20 signatures in her presence in 2005 -- after flying into Boston to do it with her at her real estate office...

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17 Q. When you say put a piece of paper, do you mean
 18 tracing?
 19 A. Tracing.
 20 Q. And then eventually all these signatures, did he do
 21 it once and then that was it? Or was it multiple times?
 22 A. Well, it's photocopies. I would photocopy that and
 23 then give him the next one until he was finished, that all
 24 the signatures were on this one sheet of paper.
 25 Q. And do you know what he did with that piece of paper?

Dominick M. Tursi, CM, CSR
 Official US District Court Reporter

Donlan - Direct/Mr. Miskiewicz

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1 A. He sent it to, I thought the bank. I don't know who
 2 he sent it to. But I know it had to do with the
 3 financials of the guys.

Despite the EDNY slanderous testimony by Donlan (*Berard's best friend*) – neither the government nor Donlan produced a single document in any year, not just 2005 as alleged (*in the 2mm documents turned over by the government*) with all of Kenner's clients signed on the same document...**BECAUSE IT NEVER EXISTED.**

Later that same day -- Kenner texted Berard (*re- the need for the notarized document which Berard called a forgery for "PV" (Paradise Valley)*)--

532	+14015246 929 Bryan Berard*	4/21/2008 6:19:35 PM(UTC+0)	Sent	Call me when free about PV
-----	--------------------------------------	--------------------------------	------	----------------------------

Kenner sent the Power of Attorney document to Berard for a signature and NOTARY after they spoke on the phone.

Berard sent the following to Kenner to confirm Kenner would get the Power of Attorney document signed on the 24th of April (*day of the signature, witness from Donlan and notarized stamp from William Medlin - ABOVE*) –

463	+14015246 929 Bryan Berard*	4/23/2008 9:14:25 PM(UTC+0)	Read	I get back 2 hoston 2nite so ill get papers 2 u 2morrow so ull have friday!!! Howd u guys do n tourney??
-----	--------------------------------------	--------------------------------	------	---

Prosecutorial Misconduct for Rule 33

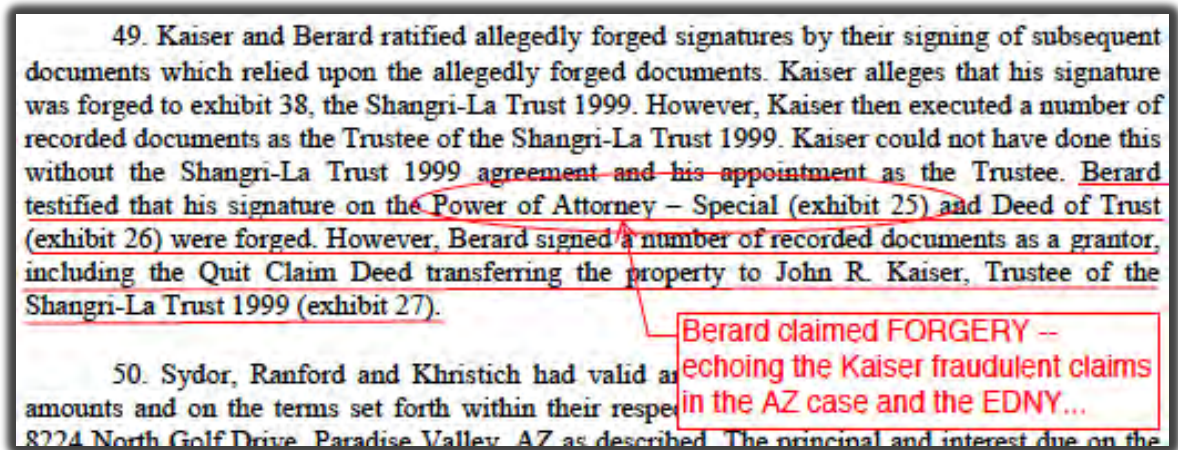
In fact --- Berard inquired about using Kenner's FedEx account to send him the notarized document "so ull have friday!!!" – which Berard called a **FORGERY** in the AZ case –

486	+14015246 929 Bryan Berard*	4/24/2008 7:52:38 PM(UTC+0)	Read	Ok 2 use ur fed x acct # 4 package??	
582	+14015246 929 Bryan Berard*	4/24/2008 7:52:50 PM(UTC+0)	Sent	Yes	
487	+14015246 929 Bryan Berard*	4/24/2008 7:54:08 PM(UTC+0)	Read	Thanks	

CLEARLY Berard PERJURED himself in the AZ case – again echoing the same FORGERY claims that have been resonating falsely since the 2008-09 Jowdy, Meeks, and Harvey claims (to disrupt the 2008-09 Jowdy UNPAID loans litigation and the 2009 Nolan arbitration) and continuing thru Kaiser and Berard's AZ defenses (represented by the same AZ attorney as Jowdy – working hand-in-hand with Tom Harvey).

The judge in the AZ case ruled against Berard (below) – even without the Kenner text messages (since Kenner was in EDNY detention and could not testify during the 2015 civil trial – costing Kenner about \$1mm in losses).

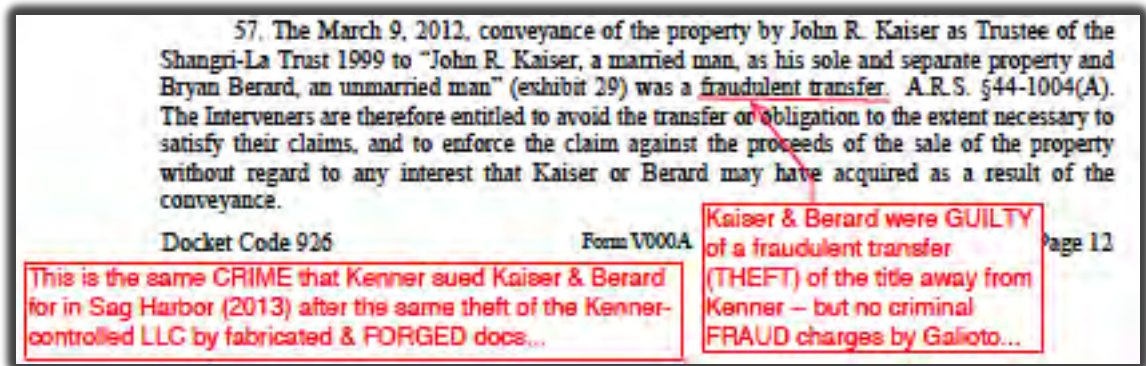
See R33 055e -- AZ ruling -- Kenner v Kaiser (paragraph 49)



Berard and Kaiser were also ruled against for their AZ fraudulent conveyance of title (aka...THEFT) –

See R33 055e -- AZ ruling -- Kenner v Kaiser (paragraph 57)

Prosecutorial Misconduct for Rule 33



Months later (in February 2009) -- Berard confirmed again -- that he uses Donlan to assist him with Notary issues --

5651	+14015246 929 Bryan Berard*	2/27/2009 3:34:23 PM(UTC+0)	Read	Email lanie the paperwork for notary so can get signed and faxed back saturday!! Email her wire info to Mexico as well get that done on monday morning. Thanks
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Prosecutorial Misconduct for Rule 33

CA Plaintiffs CLAIM NO KNOWLEDGE of cases terminated versus Jowdy by Ronald Richards due to deposition appearances --

Michael Peca confirmed to Kenner that he received the Ronald Richards email about the February 2010 court ordered depositions. Michael Peca had direct access to Ronald Richards at all times (*and certainly did via email*) and could have contacted his own attorney, Ronald Richards, directly at any time.

See R33 451 -- Michael Peca knowledge of the Ronald Richards depositions

Michael Peca had every opportunity to address anything with Ronald Richards in person with the group present (*including the upcoming deposition requests – despite the fact that Ronald Richards discussed it with the entire group – for clarity during the mediation day*).

Michael Peca with the aiding and abetting of the government – was allowed to CLEARLY PERJURE himself claiming in his EDNY testimony of “***no deposition knowledge***”

See R33 452 -- Michael Peca PERJURED testimony re – CA case depositions

Michael Peca's testimony was falsely established by the prosecutor and Michael Peca to create a false appearance of CONCEALMENT by Kenner (*with Ronald Richards' help*) for the Hawai'i loan involvement in the various litigation efforts versus Jowdy as well as the underlying issues related to the CA and AZ cases to recover funds STOLEN by Jowdy.

This is despite the fact that Michael Peca (*and 17 other Little Isle 4 members*) had signed the acknowledgment and disclosure letter for the their own attorney, Tom Baker, in September 2009 clearly representing the Hawai'i case versus Jowdy was for the \$5mm PLUS in UNPAID loans.

See R33 A -- Baker Little Isle 4 Disclosure letters

The Hawai'i loans that Jowdy received were admitted to by Jowdy in his 2-day January 2010 depositions...amongst other frauds (*like the \$3mm hard-money loan at DDM and the Diamante Air loan frauds*)...in front of investors Woolley and deVries and relayed to all of the investors. Woolley recorded and SKYPE'd the entire 2-day deposition to all interested investors...

Na'alehu Ventures 2006 Managing Member, Kaiser, was present for the 2-day deposition -- despite trying to distance himself from the 2-day Jowdy confessional deposition. Kaiser flew from NYC to LA for the 2-day deposition and returned to AZ with Kenner, Woolley and deVries via car after the depositions concluded.

Michael Peca tried to cover-up their “***no knowledge***” story during RE-CROSS by LaRusso as well.

See R33 453 -- Michael Peca echoes the same false “no knowledge” claims

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Despite the false testimony of “***no knowledge of the deposition request for Michael Peca to appear***” (see texts with Kenner above) – Michael Peca (on RE-CROSS) confirmed –

See R33 454 -- Michael Peca confirms comfort with Ronald Richards as his attorney

Michael Peca was pushed into confirming that he had a comfort level with Ronald Richards as his attorney when he hired him for the March 2011 SDNY Grand Jury appearance.

Also – Michael Peca's “***comfort***” was two (2) years after Michael Peca deposited the GSF funds with Ronald Richards and was more than one (1) year after McKee (as well as Kenner) gave Michael Peca a copy of the Ronald Richards GSF accounting.

Notwithstanding – Michael Peca falsely claimed he could not verify the use of GSF proceeds despite his direct communication with Ronald Richards and his possession of Ronald Richards' accounting of the use of GSF proceeds.

See R33 455 -- Michael Peca falsely claims of inability to authenticate GSF use of proceeds

See R33 456 -- Ronald Richards - GSF accounting Sheet1

Michael Peca had full, unabated access to Ronald Richards (as his attorney) at all times to call and authenticate – BUT if that was really an issue (FABRICATED AGAIN) – Michael Peca ***DID NOT CALL*** Ronald Richards...

...And Michael Peca only complained to the SDNY Grand Jury that he had to pay \$8,000 for Ronald Richards to assist in his appearance – and nothing about “***NO KNOWLEDGE OF HOW THE \$250,000 GSF was spent***” – which was alleged as a fraud to the EDNY by the government four (4) years later.

Now – despite Michael Peca had ***NO COMPLAINTS*** about his Hawai'i investment and loans thru the Hawai'i (Little Isle 4) project – *instead* -- Michael Peca complained about his \$8,000 fee he paid his attorney, Ronald Richards, to be represented by his own attorney for the May 2011 Grand Jury appearance in NY.

See R33 457 -- Michael Peca complains about SDNY attorney fee and not Little Isle 4 investment &/or Jowdy loans

The government misled the EDNY jury to believe Michael Peca had \$2mm in losses (in Hawai'i) which is still part of his Little Isle 4 and Na'alehu Ventures 2006 equity.

Although the 2008-09 real estate market crash and Lehman Brothers bankruptcy shut down the Hawai'i project (like the rest of America), Michael Peca's equity is still holding the “yet to be collected” 2004 loan to Jowdy proceeds – now over \$22mm.

Michael Peca did not tell &/or complain to the SDNY Grand Jury about this \$2mm Hawai'i investment issue.

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Allegedly (*in the EDNY*) – Michael Peca never knew about the use of his GSF proceeds (*see R33 455*) but also did not complain. Michael Peca's other complaints by the time of his 2011 SDNY Grand Jury testimony would have included (*if real*) – **but never mentioned until 6+ years later at the EDNY trial that --**

1. Kenner defrauded him about the alleged 6-month need for 2005 the LOC (*along with his wife's contradicting testimony*) – ***never claimed until EDNY testimony***,
2. Kenner never told him about the Jowdy loans until the night before his SDNY Grand Jury testimony (*according to the EDNY perjured testimony*) – but at the SDNY Grand Jury – Michael Peca did not say that when asked if Kenner was aware of his appearance. After Michael Peca is told that his testimony will remain "**SECRET**" in the Grand Jury -- Michael Peca told the SDNY –

See R33 459 -- Michael Peca LIES to the EDNY about Kenner's involvement in the SDNY testimony

3. ...And Michael Peca endured his wife's **SHOCK** by not being told by Kenner anything about the collateral until after it was seized (*obviously a fabricated LIE*), considering Kenner sent Michael Peca a text about the February 2009 default letter almost 8 weeks before Michael Peca confirmed on April 1, 2009 that he agreed to let the collateral be seized and authorized the initial transfer of residual funds to his Charles Schwab investment account under Kenner's management.

Warning of first Northern Trust default letter --

635 0	+1716374 3234 Michael Peca*	2/10/2009 8:13:58 PM(UTC+0)	Sent	<i>Northern Trust sent you a letter. Call me when you get it</i>	
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Michael Peca confirms speaking with Northern Trust bankers about collateral seizure and subsequent residual transfer to Charles Schwab on April 1, 2009 (all before his wife claims she was never informed until a "statement" (not a default letter) arrived EMPTIED OUT (see Kristen Peca and Kenner 2012 audio recordings) --

632 5	+1716374 3234 Michael Peca*	4/1/2009 10:44:43 PM(UTC+0)	Read	Got it. <i>Call already done.</i> Was this the plan b/c it makes sense to pay the line off or b/c the the loan defaulted? Honestly	
----------	--------------------------------------	--------------------------------	------	--	--

– BUT -- none of this ***was EVER mentioned to the SDNY Grand Jury...EVER!***

The first question from the government (*Michiewicz*) during EDNY RE-DIRECT in 2015 to Michael Peca was trying to diminish the truth that Michael Peca told to the SDNY Grand Jury

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and resurrect the false proffers about finding out the night before the SDNY Grand Jury about the loans to Jowdy.

See R33 458 -- Michael Peca LIES about his knowledge of the Jowdy loans and contradicts his SDNY Grand Jury testimony

There was a four (4) year difference between when Michael Peca told the SDNY Grand Jury (May 2011) that he knew about the loans (*and the details of the loan transactions with Jowdy*). When the government thru Michiewicz (May 2015) tried to resurrect the fabricated theory about concealment...*Michael Peca followed...this was clearly suborned PERJURY...*

Notwithstanding the fact that Peca did not tell the SDNY Grand Jury that Kenner had prepped him the night before when given the opportunity to confirm why he thought Kenner knew about Michael Peca's Grand Jury testimony – Michael Peca tried to close the loop to the EDNY court and claim that his answers about the loans, investments, etcetera were somehow not accurate because he thought that the Grand Jury was about Jowdy.

How would that change Michael Peca's truthful answers?

If Michael Peca really was uncomfortable – why didn't he claim to the Grand Jury (*in secret*) that all of his answers were only given as a result of Kenner's prep (*the night before*)?

Michael Peca did not because Kenner never prepped him for the meeting.

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Nolan – “NO LOC knowledge” –

- ***Nolan GROSSLY LIED and concealed his underlying knowledge of his Northern Trust LOCs -- at 2015 EDNY as well as the 2009 AZ Arbitration (resulting in the \$2mm judgment for Kenner to personally buy Nolan out of his allegedly unknown investment in Hawai'i) – as follows –***

In December 2007 – former Northern Trust banker Mascarella contacted Kenner to ask for help with client signatures. Mascarella wanted all of the LOC clients to sign new LOC documents before the end of 2007.

Mascarella confirmed in a March 2, 2009 deposition (*below*) that he had spoken to Nolan on a number of occasions about his LOC between the December 2003 opening and 2006 – thus clearly confirming Nolan’s knowledge of his LOC – at all times.

In late December 2007 (*at Mascarella’s request*) – Kenner sent all of the Northern Trust LOC renewal packages out to the LOC clients via FedEx (*and evidenced below by Kenner’s AMEX statement and FedEx charges -- in EDNY*). Each of the LOC clients from Northern Trust returned their individual signed documents to Northern Trust using Kenner’s FedEx account (*as represented below for Nolan – with all of the remainder on Kenner’s AMEX statements in EDNY evidence*).

See R33 460 -- December 2007 – Nolan clear communication and knowledge of his LOC with Northern Trust

Please note that Nolan sent a text on December 28, 2007 acknowledging the “***pledged***” status of the LOC collateral by asking Kenner --

“where r we getting that money since everything is tied up”

- ❖ ***This is a clear confirmation that Nolan knew his \$2mm PLUS BOND account at Northern Trust was pledged for the LOC.***

Despite all of this communication between Kenner and Nolan – Nolan claimed the following at EDNY trial (*consistent with his LIES during the 2009 Arbitration – resulting in the \$2mm judgment because the arbitrators didn’t think Nolan knew about his LOC of investment in Little Isle 4*).

See R33 461 -- Nolan EDNY lies about no LOC knowledge

This perjured testimony also occurred despite Nolan originally signing the following Extension of Credit documents directly with Northern Trust Bank, which unequivocally and undeniably confirmed Nolan’s \$2.2 million investment in Little Isle 4 and his underlying knowledge of it.

See R33 462 -- Nolan NT 2004 Extension of Credit

- ***This document was never seen by Kenner until the Northern Trust subpoenaed information arrived in week 9 of the EDNY trial...***

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See R33 462a -- NT Nolan 2004 Letter of Authorization for LI4

In the Nolan Arbitration pleadings, there was NO claim that Nolan had a LOC at Northern Trust that he was ***not aware*** of, so in preparation for the Arbitration, neither Kenner nor his attorneys requested a Northern Trust subpoena.

- ❖ There was no reason to be prepared to prove something happened as an affirmative defense at the Arbitration that was ***not alleged in the Complaint***.

After Kenner terminated his assistant Myrick (*Nolan's wife's best friend*), in 2007 for cause (*repeated sexual and drug use misconduct*), Myrick went on a slander campaign with her (*and Juneau, Moreau and Nolan's*) attorney Meeks in CA – while they both were trying to solicit clients from Kenner's client base – and working with Jowdy and Harvey adverse to Kenner and the Kenner investors.

- Please note that Meeks was one (1) of the two (2) USA attorneys who assisted in the 2010 México criminal complaint against Kenner for ***"Gun Trafficking"*** which led to Kenner's imprisonment, physical abuse and deprivation of food, water and sleep – until Kenner's attorney, Palos was able to arrange for the release of Kenner thru his México District Federal associates.

- ***Palos was murdered in México a few months after assisting Kenner's freedom and release from the México prison...***

Eventually – the harassment by Meeks and Jowdy's attorney, Tom Harvey, became so abusive to all of Kenner's clients that they each signed a letter for Harvey and Meeks with attorney Paul Augustine in order to HALT the non-stop communication attempts...

See R33 463 -- Harvey & Meeks harassment letters for Augustine

- Galioto collected these documents during his SDNY attempted Indictment of Kenner (*per the bate stamps*)...BX20-SD-####
- EVERY CA plaintiff (*19 of them*) signed the non-contact harassment letters versus Jowdy in the 2009 case(s) PLUS Kenner, Kaiser and a few other investors who were not Kenner clients...The signed letters were sent by Attorney Augustine to both Jowdy's attorney, Harvey, and Nolan, Juneau and Moreau's attorney, Meeks.

Nolan, Juneau and Moreau were the individuals referred to as ***"Bad Apples"*** by the government and ***"3 BLACK SHEEP"*** by McKee in his post-GSF meeting texts with Kenner...

See R33 464 -- McKee confirms "Bad apples" (Black sheep) and knowledge of GSF use of funds

- Please note that McKee claimed thru ***PERJURY*** in the EDNY to have no knowledge of the ***Airpark, Eufora &/or the Jet*** – related to conversations about the GSF purpose. Despite this perjury -- the above texts took place

Prosecutorial Misconduct for Rule 33

between Kenner and McKee the day after the May 8, 2009 -- face-to-face meeting in Buffalo NY.

Since Nolan's wife, Diana, was one of Myrick's closest friends, Myrick and Meeks convinced Nolan and his wife that they should not be **BROKE** (*from careless spending of over \$50mm in earnings*) and Kenner was negligent for it. Nolan was even unaware of his wife's depletion of their final \$2.75mm (*after his 2006 labor insurance settlement – texts below*)

See R33 465 -- Nolan-Schwab cash flow and valuation report

As a result of the Kenner's Plaintiff litigation for Slander, Defamation and Stolen business secrets and materials v Myrick (*Meeks' client*) – Northern Trust banker Aaron Mascarella (*EDNY witness*) was deposed by Meeks and asked about Nolan and Nolan's LOC (*even though the arbitration panel restricted Meeks from deposing Mascarella for that reason in the Nolan case*)--

Mascarella in his 3-9-2009 deposition confirms that he dealt with Owen Nolan between 2003 and 2006 related to the LOC payments being late and DEFAULT letters on the LOC...

Page 24:

20 Q. During the time period from -- ***From the time***
21 ***you opened the Nolan account until the end of 2006***, did
22 you have conversations with Mr. Nolan concerning the line
23 of credit?

24 A. Conversations -- ***I spoke to Owen***
25 ***infrequently***. I've only had brief conversations with
1 him. And my guess is that ***it was only relating to the***
2 ***payments, that the payments were being made or not being***
3 ***made***. There was a few times when the payments were slow,
4 that ***we sent out default letters***, which probably -- ***You***
5 ***know, I can't remember every conversation I had with him***
6 ***but I assume he might have responded to one of those***
7 ***default letters***.

None of the other LOCs (*including Nolan's*) had been seized at the time of the Mascarella deposition. Nolan chose to continue making the monthly payments himself – while all of the other Kenner clients strategically chose to let the LOC DEFAULT and pursue the recovery thru the AZ and México litigation with Jowdy.

This conversation is despite the fact Kristen Peca told the EDNY that when she received the statement from Northern Trust “**EMPTIED OUT**” that she was not aware. This was CLEAR concealment by her husband and not Kenner.

See R33 466 -- Michael Peca acknowledges speaking with Mascarella at Northern Trust about LOC seizure

Shortly thereafter – Nolan's attorney, Meeks, began working with Jowdy's attorney, Tom Harvey in NY, to further slander Kenner through orchestrated NY Daily News articles

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beginning in 2008 to damage Kenner's 18-year, unblemished career in Sports & Entertainment as one of the biggest Business Managers in the world (**see MONEY MAGAZINE August 2001 – Government 726-L**).

The unsubstantiated media slander – claiming FBI investigations from 2008 on (*thru Harvey's co-counsel Louis Freeh*) created total wreckage and irreparable harm to Kenner's reputation and businesses in the financial and sports industry – as Harvey had planned with his NY Daily News writer and close friend, Michael O'Keefe (*who wrote all of the anti-Kenner stories throughout the 2015 EDNY trial*)– as well.

- Please note that this series of NY Daily News slander stories were telegraphed in the April 29, 2009 threat email from Tom Harvey to Kenner's attorney, Paul Augustine, predicting the media attention and future jail time at the hands of the FBI...unless Kenner gave up his equity in the Jowdy-led México projects; Diamanté del Mar and Diamanté Cabo.

See R33 467 -- Harvey EXTORTION threat to Kenner (thru Augustine)

Harvey's April 29, 2009 "**threat email**" addressed how easily it would be to "**take**" Kenner's Cabo equity – since according to Harvey's words – Kenner was "**given**" 38% interest in Cabo for the "**loans**" that Jowdy was claiming were fake in 2008-09.

The bully-pulpit-style threats from Harvey were most absurd since his client – Jowdy – had confessed to the "**loans**" (*below – only months later*) and negotiated in 2007 with Constantine and Kenner to be relieved from his debt responsibilities without Harvey's help (*see Nevada deposition below*) and immediately after the 2008-09 AZ case for the UNPAID loans was erroneously dismissed – solely based on the "**NO LOANS**" defense tactics.

Jowdy admitted to the "**loans**" (*again*) in his 2-day January 2010 deposition (*less than one month later*).

This further confirmed the aggressive, slander-style attacks Harvey made through the NY Daily News stories as false and slanderously damaging to Kenner with malice as well as his "**late-to-the-game**" lack of knowledge (*in his own words – see Nevada deposition*) of the real facts related to the multitude of UNPAID Jowdy loans and frauds until he became involved in the innumerable Jowdy defenses (*not just from the Hawai'i project*).

Conclusively – Harvey orchestrated (*with the new-found and México-hired-help of Berard and Kaiser*) the entire Indictment campaign and scorched earth practice of defaming Kenner until the November 2013 Indictment through ongoing witness badgering and media stories in the NY Daily News and a "**paid-for**" Fortune Magazine blogger.

- Please note that prior to the slanderous Fortune magazine story in 2012 – Kenner sent the journalistically-integrity-challenged writer a long and detailed email related to the previous interview topics (*and forwarded it to all México and Hawai'i investors – adverse or not – including Berard with response below*) with the real crimes and damages caused by Jowdy, known to all involved (*despite EDNY amnesia*) against the group that Agent Galioto had continued to ignore in order to protect his friend, Jowdy, and the client of his former boss, Freeh.

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See R33 467d -- Kenner letter to Mex & Hawaii investors with FORTUNE MAG notes

See R33 467e -- Berard confirms his email auto response as -- "Thanks BB"

In fact – it was Harvey's main accomplices, Jowdy and Kaiser, who attempted (*end result still unknown*) to steal Kenner's Diamanté Cabo interest (*in Baja Ventures 2006*) after Kenner's Indictment and detainment in April 2014 via letter (*hard-copy available upon request*) with two fabricated and forged documents alleging monies due to Kaiser that were long-since repaid despite the forged agreements by Harvey, Jowdy &/or Kaiser.

See R33 467a -- Harvey "At the time" testimony re-Diamante involvement-Jowdy Deposition -- Murray v Jowdy

See R33 467b - Jowdy-Constantine confirm \$8.5mm PLUS in debt to Kenner-01. KJ-TC(e-mails)

See R33 467c -- Constantine Jowdy & Najam loan email for LB

It presents the underlying question – with all of the apparent contradictory evidence in the EDNY and at the disposal of the FBI (*during its 5+ year investigation -- 2009-2013*) -- ***why would the government represent falsely to the court that the loans to Jowdy were a farce*** – especially with Tom Harvey working hand-in-hand in the courtroom during the trial with the prosecution team at virtually every break?

Despite Nolan's claimed ignorance in 2009 (*falsely echoed by Jowdy and Najam at the 2009 arbitration*) and 2015, his wife (*Diana*) and Kenner's assistant, Myrick, communicated openly about the Northern Trust LOC.

Nolan had personally borrowed a short-term loan from the Hawai'i LOC (*in 2005 and 2006 – when he ran out of cash from irresponsible overspending and no income*) and needed to be repaying the funds (*because the funds belonged to Little Isle 4 – not Nolan personally after he signed the Extension of credit and Letter of Authorization for Little Isle 4 in October 2004*).

- Please note that Sydor echoed the same confirmation of Little Isle 4 owning the funds – not the individual investors after the LOC commitment and signed bank forms (*Letter of Authorization and Disbursement Request – signed annually for full disclosure of used funds*) to the SDNY Grand Jury.

See R33 467f -- Sydor confirmed to the SDNY Grand Jury that he knew Little Isle 4 owned the funds he signed to invest through his LOC...

The transfers of funds in August 2006 (*handled by Nolan's wife and her personal Wells Fargo banker – Kim Crane*) confirm the Nolan family's working knowledge of the Northern Trust LOC.

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In fact – the fact they were repaying the Northern Trust LOC (*established for the Hawai'i project*) also confirms that they knew the LOC funds no longer belonged to them – BUT were Hawai'i investment funds.

See R33 468 -- DNolan pays NT LOC fees

- The PK_SEC_006719 BATE STAMP also proves that the government has been 100% aware of the Nolan's knowledge of his LOC -- since Kenner turned it over in 2011...originally receiving it from Myrick (*after stolen*)...

This document – which was prepared by Kenner's assistant, Myrick, confirms that not only was Kenner's assistant aware of the Northern Trust LOC in August 2006 (***& Diana Nolan's best friend***), but so was Nolan's private banker at Wells Fargo (*Kim Crane*) who initiated the email regarding the repayment of the **\$134,396** to the Northern Trust LOC.

- ***This email is from three (3) years before the Nolan 2009 arbitration in AZ when Owen Nolan claimed no knowledge of the LOC – despite it being in the possession of Myrick and Meeks for the Nolan arbitration and Myrick defense case (from Kenner).***

This (*above*) email document is also BATE STAMPED by Myrick (MYR0001065) in the **2008 CA case Kenner versus Myrick** after Myrick stole all of Kenner's Standard Advisors corporate files in 2007 when she was dismissed "**for cause**" from her job with Standard Advisors, including but not limited to sex, drugs & alcohol related issues with Kenner clients.

- ***THUS – Nolan and Myrick (both represented by Attorney Meeks) had the LOC information in their collective possession when Nolan fraudulently claimed to the 2009 arbitration (3 years later) that he was not aware of the LOC (just like his perjury in the 2015 EDNY trial).***

This production was from Myrick and Meeks' (*Nolan's attorney*) partial email production and selective disclosure of stolen information during the 2008 CA litigation – Kenner v. Myrick – depriving Kenner of any and all evidence from Kenner's Standard Advisors emails prior to March 2007 (*since April 2002*). Only the emails that were subsequently turned over by Meeks (*beneficial to Nolan in the arbitration &/or Myrick slander defense*) and selectively thru Jowdy litigation were recovered.

Kenner sued Myrick for Slander, Defamation and stolen company materials (*which Myrick settled for a six-figure out of court payment to Kenner*).

- Please note that Kenner never received the remainder of his company's documents back from the litigation. Meeks and Myrick claimed at the settlement that they server had been "**deleted**" by accident...

See R33 469 -- Nolan confirms to the FBI that Myrick had Kenner's server with all Kenner transaction history and emails

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This LOC notification of payment to Nolan's wife via email was prepared as a result of the following document Kenner emailed to Myrick to handle all of the Nolan issues OPENLY in August 2006.

See R33 470 -- Kenner email to Myrick re-- Nolan LOC payments

Then -- Kenner's assistant, Myrick, sent the following preparation email to Diana Nolan about Northern Trust LOC fees due with more information to follow --

See R33 471 -- Myrick email to DNolan re -- NT LOC fees

- Please note that Kenner is not cc'd on the email -- thus completely handled between Kenner's assistant and Diana Nolan -- Owen's wife (*who at Owen's request was treated as the Kenner client*).
- Second -- Please note that -- the document is **BATE STAMPED** by Nolan for the 2009 Arbitration -- *thus known to Nolan and Attorney Meeks prior to the Arbitration and Nolan's perjury*.

After the list of transactions that Myrick tells Diana Nolan about on August 2nd and 3rd, 2006 -- Diana thanks Myrick (*without Kenner cc'd*) --

See R33 472 -- DNolan Aug 2006 THANK YOU emails to Myrick

A few days after the first request to Diana Nolan to pay the LOC fees at Northern Trust which were accruing interest -- Myrick emails Diana Nolan again to remind her about the LOC fees still due --

See R33 473 -- Myrick email to DNolan re-LOC fees

- Myrick confirms to Nolan that she is in contact with the Northern Trust bankers regarding the LOC (& *them to her*) -- further evidence of **NO CONCEALMENT**...
- Please note that the same Nolan **BATE STAMP** is on the document from Nolan pre-arbitration in 2009.

Almost one year prior (*November 2005*) -- Kenner forwarded the full roster of LOC clients -- **TITLED: PLEDGED ACCOUNTS** -- from Northern Trust baker Greg Cygan to Myrick so she could deal with Kenner's clients with Northern Trust LOCs -- if necessary --

See R33 474 -- NT LOC info emailed to Myrick

In fact -- with further TRANSPARENCY between Kenner's assistant and the bank -- on August 11, 2006 -- Myrick confirmed with Mascarella (*EDNY government witness*) that Nolan's LOC loans were being repaid to Northern Trust as follows --

See R33 475 -- Myrick email with NT re-- Nolan LOC statement

Northern Trust Banker -- Mascarella responds --

Prosecutorial Misconduct for Rule 33

From: Aaron T Mascarella <Aaron_T_Mascarella@notes.ntrs.com>
Sent: Friday, August 11, 2006 1:03 PM
To: Kristine Myrick <kristine@standardadvisors.com>
Subject: RE: Nolan

thanks -yes I did and we're paying it down today. I'll request a statement and will get that over to you.

- ***Myrick was getting a copy of the Nolan Northern Trust statements for Diana Nolan after the pay down of the \$134,396 to the LOC...FULLY TRANSPARENT to Nolan...***

Now in November 2005 – ***without Kenner being cc'd on the email*** – Diana Nolan informs Myrick that she wants information sent to her mailing address in AZ.

See R33 476 -- Nolan address change to AZ

- This above email document is also BATE STAMPED by Myrick (MYR0001249) in the ***2008 CA case Kenner versus Myrick...***

Myrick changed the mailing address for Nolan for their Northern Trust accounts to the AZ address in November 2005 – ***NOT KENNER***.

Nolan received a ***DEFAULT*** letter for the Little Isle 4 LOC (*the precursor to his individual LOC – initiated in December 2003*) at his AZ address –

See R33 477 -- NT March 2007 DEFAULT Letter for Little Isle 4 LOC

The DEFAULT letter told Nolan that the LOC is 53 days late – which means Mascarella and Northern Trust would have sent Nolan the Little Isle 4 LOC renewal paperwork to the AZ address after the address change by Myrick (*at the request of Diana Nolan*).

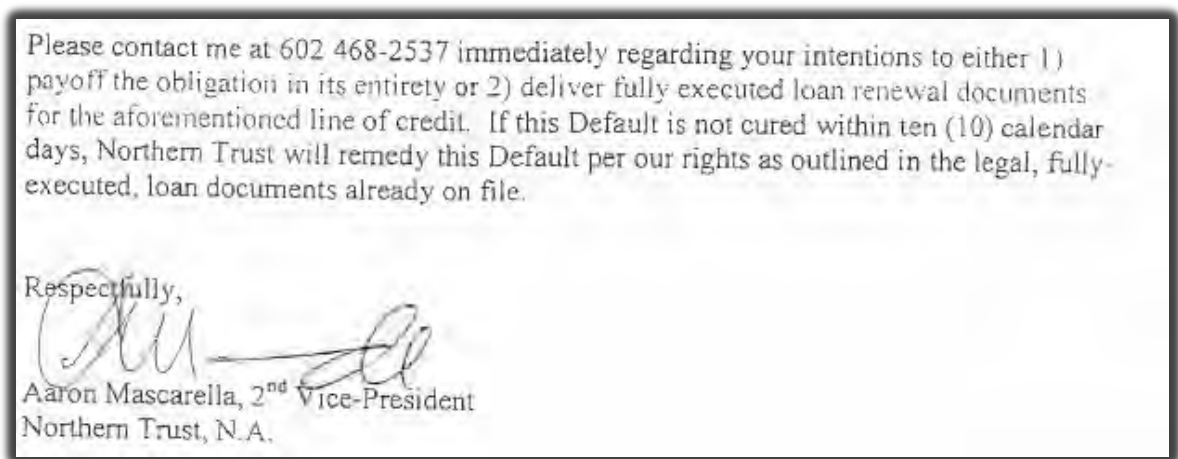
Nolan received the paperwork and NEVER signed it. Thus – the DEFAULT letter was sent with a CC: to Kenner.

Notwithstanding all of the previous acknowledgments of the Nolan LOC (*and Mascarella's deposition testimony confirming the pre-2006 communication with Nolan*) -- Nolan LIED at EDNY when he testified he knew nothing about wither the Little Isle 4 LOC &/or his personal LOC for the Hawai'i investment.

See R33 478 -- Nolan lies about no LOC knowledge to the EDNY

Even though – Mascarella explained in the letter –

Prosecutorial Misconduct for Rule 33



- Unfortunately there were no smart phones invented until later that summer (*Fall 2007 by Apple*) which captured the text exchange between Kenner and Nolan CLEARLY confirming Nolan's knowledge of his Northern Trust LOC until December 2007. ***Remember that all Kenner emails pre-2008 were stolen by Myrick and confirmed by Nolan's FBI proffer.***

No emails from Nolan were turned over in evidence by the government during the EDNY trial.

In fact – other than the Little Isle 4 LOC documents that Nolan signed in 2003 (*above*) and 2005, 2006 & 2007 before it was paid off, ***Nolan signed approximate 40 more documents for his personal LOC (all received in the week 9 Northern Trust subpoena box).***

The newly arrived evidence that was delivered (*only partially filled*) in week 9 of the EDNY trial (*and after all of the government witnesses had been dismissed*) included a few documents Nolan signed as a result of the ***December 2007 texts (also incomplete from the Northern Trust subpoena).***

See R33 479 -- NT 2007 Nolan Change in Terms Agmt

- Identifies the \$2.2mm outstanding LOC –

See R33 480 -- NT 2007 Nolan Disbursement Request & Auth

- Please note that this is the Disbursement Request and Authorization that Nolan signed as a result of the December 2007 text exchange with Kenner -- ***December 2006 -- identifying that \$2,189,796 was already "PAID" out.***
- There can be no misunderstanding what this form represented to Nolan in December 2007 – after all of the texts and phone calls between the parties.

Despite what he signed in December 2007 – Nolan lies about LOC balance knowledge to the EDNY (*just like in the 2009 arbitration*) –

Prosecutorial Misconduct for Rule 33

24	Q	Okay. In or about the period May 23, 2007, according
25		to the documentary evidence that has been entered into in
		Owen M. Wicker, RPR
		Official Court Reporter
		2070
1		this trial so far, you had a balance of negative
2		\$2,189,796.02 at your Northern Trust line of credit in or
3		about that period of time, May 2007 -- I'm sorry,
4		April 2007.
5		Did you know that you had a line of credit that
6		had that much money drawn against it?
7	A	No.

See R33 481 -- NT 2006 Nolan Disbursement Request & Authorization

- Please note that this is the Disbursement Request and Authorization that Nolan signed the previous year -- **December 2006** -- identifying that \$1,376,307 was already "PAID" out.

Most of Nolan's signed documents were **NOT** seen by Kenner before the delivery of the subpoenaed "**BOX**" (at EDNY -- week 9) -- SINCE all of the LOC documents were sent from the loan officers at Northern Trust to the Kenner clients and returned directly -- other than when Northern Trust (*Mascarella*) wanted all of the documents signed in December 2007 before the end of the year (see Nolan texts with Kenner above).

Kenner saw the majority of these documents for the first time in or about week 9 of the EDNY trial when the 2-week, "**so ordered**" EDNY subpoena from Judge Bianco arrived partially filled over nine (9) weeks late.

None of these documents were available for CROSS EXAMINATION at trial of the government witnesses.

- ***No documents were received for Norstrom, Gonchar, Glen Murray &/or Little Isle 4, and ONLY a partial subpoenaed response was sent for Sydor.***

In late December 2007 -- All Kenner clients were sent a copy of the documents from Kenner (*AMEX & FedEx account confirms Kenner's proof of sending*) and all LOC clients returned the LOC documents to Northern Trust before the end of the year with Kenner's FedEx account (*documented on Kenner's AMEX bills in evidence -- as well -- thus full "hands-on" knowledge of the LOC paperwork*).

See R33 482 -- Kenner clients sign and return Northern Trust LOC documents using Kenner FedEx account in December 2009

Owen Nolan was Kenner's only client that permitted his wife to handle their business affairs with Kenner as if he was doing it himself.

Prosecutorial Misconduct for Rule 33

When Kenner visited the Nolan's at their homes (*because of Diana Nolan's hands-on involvement*) about every six (6) weeks over a 7-year period of time (2001 thru 2008) – Owen Nolan would join the conversations about the family investments and money for about an hour or so before he would get bored.

- ***Kenner and Nolan's wife, Diana, would talk well into the early hours of the morning before retiring for the night – with Kenner staying at their home (and never in a hotel).***

As an example of Nolan's lack of knowledge – despite the conversations with him and his wife – Nolan was injured in or about 2004 – the year before the NHL ***"lock out"*** (*or work stoppage*) by the NHL owners through the 2004-05 season and partial 2005-06 season. Nolan's team, The Toronto Maple Leafs – suspended Nolan during that period of time as the team alleged he suffered his knee injury while mountain biking as opposed to on the ice.

As a result – there was litigation between the parties that resulted in a \$5mm settlement between the parties in September 2006.

See R33 483 -- Nolan confirms his \$5mm injury settlement

Instead of paying \$2.5mm in taxes to Canada (50% tax) – Kenner negotiated with Revenue Canada (*the Canadian IRS*) to tax Nolan 25% tax (*a \$1.25mm payment as an insurance settlement in lieu of income*) and let Nolan pay the remainder to the USA – thus lowering his effective tax rate to 39.6% -- ***saving Nolan \$500,000 in taxes from the settlement deal.***

In hindsight – Kenner's negotiations and delayed \$750,000 tax payment to the IRS cost Kenner his relationship with Nolan – because his wife spent the funds set aside for the payment and they were broke when the IRS bill arrived one (1) year later.

"No good deed goes unpunished" – Abraham Lincoln

As a result of the negotiations with Revenue Canada and the IRS – Kenner knew that another ***\$750,000*** would be due to the USA about one year later. Kenner instructed (*email below confirms*) Nolan's wife to deposit \$750,000 into a separate account to earn interest for one year before being released to the IRS.

This was completed (*email confirm below*).

See R33 465 -- Nolan-Schwab cash flow and valuation report

Nolan's wife ordered \$1mm to be deposited into her checking account (*from the \$5mm settlement check*) to handle bills that had been accumulating.

See R33 470 -- Kenner email to Myrick re-- Nolan LOC payments

The Nolans agreed to place the remaining \$2mm into their investment account at Charles Schwab in a bond account (*and not be touched – thus generating about \$80,000 of tax-free income per year -- forever*) – especially since Nolan had spent over \$7mm (*all their liquid funds after earning over \$50mm+ to date in Owen's career*) due to poor financial decisions in

Prosecutorial Misconduct for Rule 33

the previous three (3) years as a result of a few homes they bought (*against Kenner's recommendations*), and losing millions after building and selling the homes at BIG losses – with Diana Nolan's father as the contractor.

Diana Nolan and Myrick discussed the arrival of the check, so Diana Nolan could handle the bills Kenner and Myrick informed her of –

See R33 484 -- DNolan and Myrick email re- \$5mm check

This above email document is BATE STAMPED by Myrick (MYR0000580) in the **2008 CA case Kenner versus Myrick** after Myrick stole all of Kenner's Standard Advisors corporate files in 2007 when she was dismissed "**for cause**" from her job with Standard Advisors, amongst other drug, sex & alcohol related issues with Kenner clients.

- *THUS –Kenner never saw more than 50% of the communication between Myrick and Nolan's wife through Myrick's termination in 2007 (not cc'd).*
- *Their extremely close relationship would not have permitted Myrick to **CONCEAL** any of the Northern Trust LOC information from Diana Nolan (&/or Owen Nolan) – which she obviously did not.*
 - ***Neither Nolan's attorney in 2009 nor the government in 2015 chose to put Myrick on the witness stand to testify that Kenner ever instructed her to CONCEAL information from Nolan &/or any other Kenner client.***

This production was from Myrick and Meeks' (*Nolan's attorney*) partial email production and selective disclosure of stolen information during the 2008 CA litigation – Kenner v. Myrick.

About 18 months later (*March 2008*) – *when the \$750,000 IRS tax bill came due and Nolan could not pay it* – Kenner told Nolan that he was "**BROKE AGAIN**" and his wife had spent all \$3mm PLUS (*after-tax*) of his insurance payment from Toronto – despite Kenner's recurring warnings to Owen and Diana Nolan prior to this throughout 2007.

Nolan was UPSET and sent Kenner the following text -

1165	+14169970110 Owen Nolan*	6/6/2008 2:19:38 PM(UTC+0)	Read	<i>What did we invest the settlement money in</i>
------	-----------------------------	-------------------------------	------	--

Kenner replied the same day (*despite Nolan's claims that he could not get a hold of Kenner*) –

1354	+14169970110 Owen Nolan*	6/6/2008 4:26:44 PM(UTC+0)	Sent	<i>I'll get all that info this afternoon and get u a full breakdown of where it went. Pk</i>
------	-----------------------------	-------------------------------	------	---

Prosecutorial Misconduct for Rule 33

Kenner produced the following report as soon as Kenner received it from the Schwab advisor – Jim Graham at Greenberg Graham (*above*) –

See R33 465 -- Nolan-Schwab cash flow and valuation report

Kenner informed Nolan that his wife – who handled all of the funds – ***had spent all of them*** – ***SPECIFICALLY*** including the \$750,000 that was set aside for the IRS tax bill.

Owen Nolan was distraught...

Diana Nolan (SweetPea1275@aol.com) received the following from Myrick – who signed off to her “close” friend XOXO ~Kris (***hugs and kisses***)--

See R33 485 -- DNolan \$750k tax check request

- Please note that – ***as mandatory on all wire transfers (despite the government proffers)*** – the client had to be involved in the process either by signing the actual transfer &/or verbally verifying the amount and payee to their investment advisor, Jim Graham (*at Greenberg Graham Associates*).

Diana Nolan signed the \$750,000 wire request (*for future taxes*) prepared by Myrick to complete the transaction (*perhaps unknown to her husband, Owen*) –

See R33 486 -- Nolan \$750k transfer for IRS taxes

Diana Nolan signed the \$2 million wire request prepared by Myrick to complete the transaction (*perhaps unknown to her husband, Owen*) –

See R33 487 -- Nolan \$2mm transfer post \$5mm settlement

- Please note that the Nolans had a habit of major withdrawals (*typically draining his entire savings/investment accounts*) throughout the relationship since 1999 with Kenner until they ran out of funds and sued Kenner for the investment funds Nolan had made into private investments in 2008 – led by Myrick and her attorney, Michael Meeks.
- Nolan was “***cash poor***” after he had earned over \$50 million in his career by 2008 and had nothing to show for it – ***due to reckless spending by himself and his wife, Diana.***

See R33 465 -- Nolan-Schwab cash flow and valuation report

Now – based on the request from Nolan – ***21 months later*** -- to Kenner about his \$5mm in settlement funds –

1165	+14169970110 Owen Nolan*	6/6/2008 2:19:38 PM(UTC+0)	Read	<i>What did we invest the settlement money in</i>
------	-----------------------------	-------------------------------	------	--

Prosecutorial Misconduct for Rule 33

Kenner showed Nolan the following ***Capital flow report*** to him that his wife who had made ALL of the withdrawals on their account – ***INCLUDING the \$750,000 that was set aside for his IRS bill*** (from the \$5mm Toronto insurance settlement).

This was the end of the relationship with Nolan as ***Owen claimed that Kenner should not have let he and his wife spend their own money...& being “BROKE” was Kenner’s fault.***

See R33 465 -- Nolan-Schwab cash flow and valuation report

The last \$2.75mm in SAVINGS was completely drained within 17 months – after \$50mm++ in earnings were already spent pre-2006...

Although Nolan claimed to be uneasy about his investments (*below at EDNY*) – the real conversation was about his wife spending all of their money on the third (3rd) house they owned in Northern CA (*which was new construction with Diana’s father as general contractor -- and who was looting funds from them*). This caused Nolan to be distressed and pain-stricken.

Kenner had no role “***in conservatorship***” for Nolan &/or any of his clients.

This is not the first time that Kenner clients who blew thru their earned fortunes blamed Kenner for their own personal spending habits.

See R33 527 -- Sydor (and others) complain that they are BROKE

See R33 528 - Kaiser BROKE after \$500,000 wire to Kenner – stolen from his “friends & family”

See R33 488 -- Nolan LIES to the EDNY about issues with Kenner in 2006-07

None of Nolan’s outrageous lifestyle expenses were managed by Kenner – and Nolan had 100% of the same documents that every other investor had...all signed by himself &/or his wife...including the 40+ Northern Trust Bank documents for his two (2) LOCs – personally and Little Isle 4.

Nolan and his wife – ***specifically thru Myrick*** – had access to all of their private investments and outside (3rd party) advisors, including but not limited to –

- *Charles Schwab investments,*
- *Northern Trust Bank investments (see Mascarella 2009 deposition confirming direct communication with Nolan between 2003 and 2006 – when Nolan claimed ZERO knowledge of his LOC – MORE suborned PERJURY), and*
- *Jowdy – México investments.*

MORE Nolan LIES from EDNY –

Prosecutorial Misconduct for Rule 33

15 Q Now what is the balance?
16 A 2,000,199. Close to 2.2 million.
17 Q Did you know about this when it was happening?
18 A No.

2073

Nolan signed the following four (4) years of Disbursement Request & Authorization forms for Northern Trust that confirmed the outstanding balance of the LOC at the time of the renewal.

- Please note that each of the Disbursement Request & Authorization forms confirmed that the funds were used for an ***“investment in Little Isle 4”*** – thus fully committed at the time of the investment in 2004 for Nolan (*just like Sydor confirmed to the SDNY Grand Jury*).
- Clearly – at least according to Nolan's perjured EDNY testimony – Nolan knew none of it – regardless of the multitude of bank documents he signed...

See R33 481b -- NT 2004 Nolan Disbursement Request & Authorization

See R33 481a -- NT 2005 Nolan Disbursement Request & Authorization

See R33 481 -- NT 2006 Nolan Disbursement Request & Authorization

See R33 480 -- NT 2007 Nolan Disbursement Request & Authorization

MORE Nolan PERJURY from EDNY –

In fact in the 2008-09 Nolan arbitration – there was ***not a claim in the Complaint*** by Nolan and his attorney that Kenner had accessed or established Nolan's LOC without permission – *simply Nolan's testimony that he didn't remember opening the LOC – despite acknowledging that he signed the Northern Trust documents (the limited few that were in evidence).*

At the time of the arbitration (*and until the 2105 Northern Trust subpoena arrived partially filled*) – Kenner was unaware of the volume of documents that his clients had specifically signed directly with Northern Trust while renewing their annual LOCs – since those records were transmitted directly between Northern Trust Bankers (*including Mascarella*) and their clients (*LOC clients*).

Specifically – Kenner had never seen any of the individual EXTENSION of CREDIT documents confirming the ***INVESTMENT in Little Isle 4 &/or SPECULATIVE REAL ESTATE*** -

R33 462 -- Nolan NT 2004 Extension of Credit

R33 659d5 -- NT 2005 Extension of Credit - Rucchin-1

Prosecutorial Misconduct for Rule 33

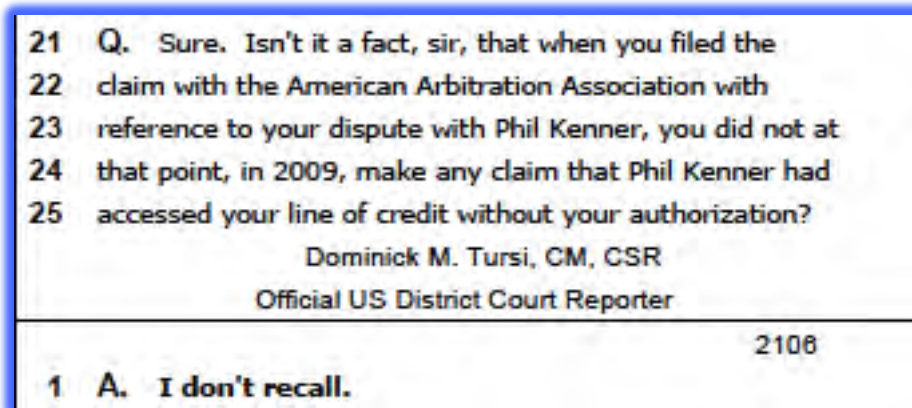
R33 580a -- NT 2005 Peca Extension of Credit

R33 313 -- NT Extension of Credit \$900k - Berard-2

- Please note that the ***Extension of Credit documents*** for Sydor, Norstrom, Gonchar, and Murray were not included in the Northern Trust subpoenaed documents – *although they were requested in the original Kenner Northern Trust subpoena before trial...*

Throughout the years – Kenner never received a single email &/or text complaining to Kenner about the LOCs when they signed the annual renewal paperwork.

Nolan from the EDNY --



- ***There was no claim about the LOC being wrongfully established &/or accessed –***
THUS -- Kenner and his attorneys did NOT subpoena the LOC documents Nolan signed (*about 50 unique documents – including the Little Isle 4 documents*) with Northern Trust from 2003 thru December 2007 (*represented in the text exchange - above*)...

Although Nolan testified that he didn't remember receiving any documents from Kenner that were shown to him &/or he signed – Nolan claimed Kenner informed Nolan about the progress of his Hawai'i investment even before he signed the July 2006 disclosure letter and 2006 Little Isle 4 operating agreement showing Nolan was the largest Little Isle 4 shareholder for his \$2.3mm investment.

See R33 489 -- 2006 Little Isle 4 Acknowledgment & Consent letter with ALL SIGNATURES (page 8)

See R33 490 -- 2006 Little Isle 4 Operating Agmt (all SIGS) (page 32)

See R33 491 -- Nolan confirms Kenner discussed Hawai'i – Little Isle 4 investment

BUT – Kaiser during his October 19, 2010 proffer with the FBI (*and as the Managing Member of Na'alehu Ventures 2006 -- Hawai'i since December 3, 2007*) told the FBI agents that ***he has seen all (multiple) updates Kenner prepared for the Hawai'i project.*** This

Prosecutorial Misconduct for Rule 33

proffered information was from Kaiser -- the Managing Member of the Hawai'i project since December 31, 2007.

See R33 492 -- 3500-JK-1-r (page 3)

See R33 492a -- 3500-JK-1-r

- Please note that NONE of the update letters were turned over from the search and seizure at Kenner's home office -- although they were in the Hawai'i updates folders.
- Also -- the Hawai'i project folders from Kenner's home office were never turned over either from the search and seizure. When an independent person searched the office after the FBI left -- there were no Kenner business materials remaining.

Yet -- Nolan claimed he never recalled receiving update letters -- further promoting and emphasizing the government's theme of concealment.

See R33 493 -- Nolan denies receiving Little Isle 4 update letters from Kenner

At EDNY -- Nolan confirmed that his wife handled the paperwork.

See R33 494 -- Nolan confirms his wife handled the paperwork

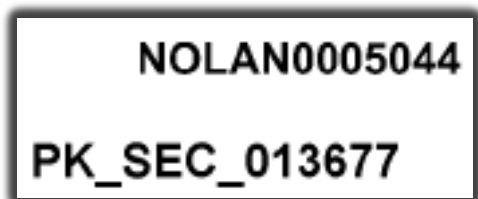
Nolan also claimed that he doesn't remember receiving the Little Isle 4 tax document at his home residence that confirmed his \$2.3mm investment in Little Isle 4 -- in addition to the 50 signatures with Northern Trust.

See R33 495 -- Nolan 2006 LI4 K1 (2.3mm)

See R33 496 -- Nolan Little Isle 2006 tax return

Now -- Nolan received the following 2006 K1s directly from Little Isle 4's accountant. Each of these were turned over by Nolan as evidence in the 2009 arbitration -- ***IDENTIFIED by the Nolan BATE STAMPS*** -- and thus in his possession (*which Kenner turned over to the SEC years later*) --

From Nolan 2006 Hawai'i K1 --



Nolan turned these over for the 2009 arbitration (*Nolan BATE STAMP*) -- thus he 100% had them in his possession...pre-Arbitration

From Little Isle 4 2006 K1 --

Prosecutorial Misconduct for Rule 33



Nolan turned these over for the 2009 arbitration (*Nolan BATE STAMP*) – thus he 100% had them in his possession...pre-Arbitration

Nolan ***had these documents*** in his records from the Little Isle 4 2006 tax filings – ***but does not remember seeing them...***

On the Nolan K1 – it clearly identifies his \$2.3mm investment (*which equaled his \$100,000 cash investment plus his \$2.2mm LOC investment capital*).

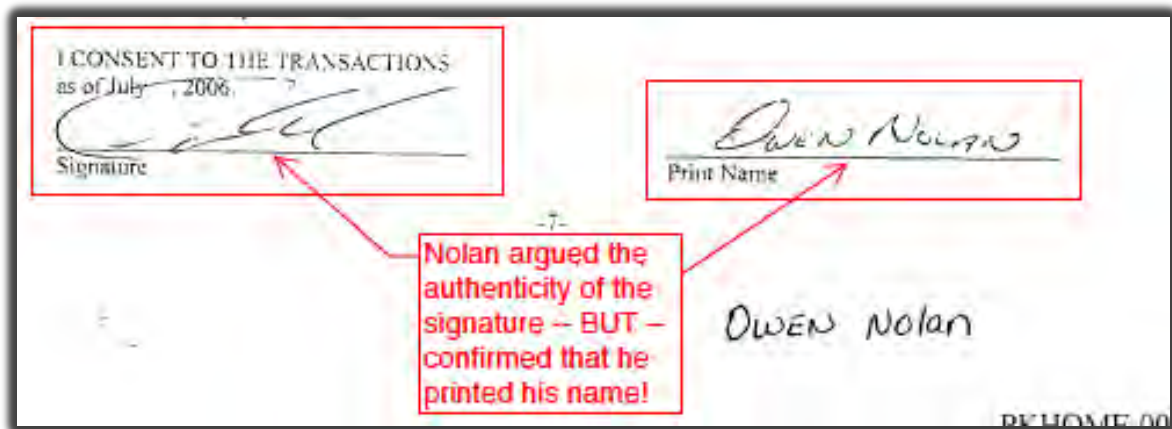
The Nolan K1 indicates the ***\$761,458 payment*** that Nolan received in 2006 from the August 2006 Lehman Brothers closing.

In the ultimate Nolan attempted prepared fraud on the EDNY – as prepared by the government for his testimony – Nolan claimed that the Little Isle 4 Joint Venture authorization form may or may not be his signature -- BUT – on the same page that Nolan cannot identify his signature...***Nolan SHOCKINGLY, UNPARDONABLY and DISGRACEFULLY confirms that –***

“It is his handwriting that PRINTED his name”...

See R33 497 -- Nolan denies his signature but confirms he hand-wrote his name?!?

See R33 489 -- 2006 Little Isle 4 Acknowledgment & Consent letter with ALL SIGNATURES



Nolan's testimony about the signature was the same confrontational and argumentative testimony given by each witness – despite the obvious TRUTHS about them – accentuated by Nolan's incredulous and dubious LIE *above...*

Prosecutorial Misconduct for Rule 33

The court also raised the same issues about Kenner's lack of documents. The government has NEVER (*thru June 2016*) returned either Kenner's original computer &/or iPhone (*or any of the other peripheral devices seized at Kenner's home office*).

The government failed to produce the information the Court requested –

19	THE COURT: So they're not going to say that wasn't
20	on the computer, the government got those from somewhere else.
21	So I'm not sure what the basis would be. But we can talk
22	about it more on Monday. I don't want this to go endlessly
23	because the government is done searching the computer. We're
24	in trial. There is an issue about returning the computer.
25	On Monday, I want you to -- and we'll go back on
	RONALD E. TOLKIN, RPR, RMR, CRR
	OFFICIAL COURT REPORTER
	2144
1	this -- your position is that you can hold the original. You
2	need to explain to me your possession. Show me where it says
3	that the government should be able to do that from a second
4	circuit decision. All right?
5	MR. MISKIEWICZ: Will do.
6	MR. HALEY: Your Honor.
7	THE COURT: Hold on one second.
8	My law clerk reminded the phone too, which is the
9	same issue.

- ***This was NEVER presented to the court...***

Nolan and the government (*not Kenner*) turned over the evidence that has the Nolan BATE STAMPS on them during EDNY discovery and Nolan had the two tax documents in his possession for the 2009 arbitration with Kenner (*again – note the Nolan ##### BATE STAMPS*)...

Prosecutorial Misconduct for Rule 33

10 MR. HALEY: Your Honor, the only reason I'm bring
11 this up now is I think we have some time. I did endeavor to
12 offer Kenner Exhibit 62 in evidence. That's a May 1, 2006
13 from Eufora LLC to Owen Nolan, with his address. I don't know
14 if the government's taking a firm position yet, but they would
15 not consent to stipulate it to admitting it by way of
16 stipulation.

17 And I agree, Judge, I did not approach the
18 government previous to that. I assumed it would be no
19 problem. It was an assumption on my part that I shouldn't
20 have taken. As an offer of proof, Judge, the value of this
21 document, from the defense perspective, is quite significant.
22 This witness clearly testified that at no point authorized his
23 line of credit to the tune of 2.2 million to be accessed by
24 Little Isle IV for the purposes of the Hawaii Land Development
25 Investment. We have a K-1 in 2006 coming out of Little Isle

Prosecutorial Misconduct for Rule 33

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1 IV, to Owen Nolan, reflecting the capital contributed during
2 the year, \$2,300,000.

3 So you have the \$100,000 original investment. You
4 have a \$2.2 million original investment. You then, of course,
5 have distribution in the amount of \$761,458. Judge, it says
6 records maintained by the IRS. My point, really, is quite
7 simple. If it's part of the government's theory that Phil
8 Kenner accessed these lines of credit without authorization,
9 he's a pretty inept criminal. What I mean by that is, in 2006
10 he generates -- Little Isle IV generates a K1 that reflects
11 just that.

12 We believe, and the offer of proof would be that it
13 was sent to the accountants for the purposes of completing
14 their tax returns in that year. I believe this is a document.

15 THE COURT: You said the accountants?

16 MR. HALEY: I misspoke. The Nolans. We believe
17 that a search of their tax records would reveal the
18 information contained on this K1.

19 THE COURT: But that wasn't produced to you by the
20 government. The government didn't provide you with that. You
21 got that from your own --

22 MR. MISKIEWICZ: Your Honor, we did provide it,
23 again, as one of the records that came from the search of
24 Mr. Kenner's house. So the only place we know it lives is in
25 the defendant's own home and records. We have no information

**PATENTLY
FALSE** -- since
Nolan
produced it
in the 2009
arbitration...

The
government
was well aware
of their **FALSE**
proffer to the
court...

2146

1 that this information ever either got to Mr. Nolan or was
2 filed with his return to the IRS. So the basis of our
3 objection was just that, it's a document created by the
4 defendant.

Again -- Nolan and his attorneys produced the Little Isle 4 and Nolan K1s in the 2009 AZ arbitration

-CONFIRMING -

That Nolan had the document in his possession and produced the Nolan BATE STAMP pre-arbitration - not Kenner.

Prosecutorial Misconduct for Rule 33

- In addition – on the Little Isle 4, K1 that was sent to Nolan and all of the investors (see *Nolan BATE STAMP* – confirming Nolan's possession of the tax document – not Kenner) – the K1 accurately reflected the approximate \$8 million that was invested in the Little Isle 4 land parcels (and expenses) as represented in the Little Isle 4 July 2006 disclosure letter signed by Nolan and all of the Little Isle 4 members before the Lehman Brothers closing and a requirement of Lehman Brothers' legal advisors.

See R33 496 – Nolan Little Isle 2006 tax return

The 2006 Little Isle 4 disclosure letter confirmed Approximate \$8mm Invested in the Parcels by the investors.

See R33 489 -- 2006 Little Isle 4 Acknowledgment & Consent letter with ALL SIGNATURES

- Please note that the Little Isle 4 attorney, Larry Markowitz (with attorney William Najam), wrote this disclosure letter with Lehman Brothers' approval before being circulated to the Little Isle 4 inventors...

The Najam and Markowitz's preparation of the Little Isle 4 disclosure letter (and not by Kenner) was confirmed William Najam in the 2009 Nolan arbitration as an adverse party (and Jowdy brother-in-law).

See R33 498 -- 2009 Nolan arbitration – Najam confirms authoring the Little Isle 4 disclosure letter

Then – to finish the tax disclosure to the investors – the Little Isle 4 K1 represents the \$13mm in capital investments (including approximate \$5mm in Hawai'i loans to Jowdy)...

See R33 496 -- Nolan Little Isle 2006 tax return

This could not be more clear to the investors – ***if they read it &/or remembered it.***

In fact -- during the 2009 arbitration -- Nolan claims he signed the authorization letter for Little Isle 4 and Kenner -- BUT that he is unaware of the LOC and the supporting documents that he signed. Disregarding the frivolity and nonetheless – Nolan's attorney attempted to refute his own client's testimony and claim that maybe he did not sign it – once the arbitration was moving heavily in Kenner's favor.

See R33 499 -- Nolan admits his Letter of Authorization signature despite claiming NO KNOWLEDGE of LOC

Even the 2009 lead arbitrator wondered aloud – “if Nolan signed the document – doesn't he have to take responsibility for it?”

Why is that logic not relevant in each and every instance in the 2015 EDNY criminal case?

Prosecutorial Misconduct for Rule 33

- Every LOC Hawai'i investor signed their own Northern Trust **Letter of Authorization**,
- The GSF contributors returned every **GSF Acknowledgment and Approval** email, and
- Every Eufora investor **confirmed their transfers to their advisor at Charles Schwab BEFORE** the deposits were made to buy stock from Gaarn (Standard Ventures) &/or Constantine (thru Constantine Management Group).

In the 2009 Arbitration between Kenner and Nolan, despite confirming he signed the **Letter of Authorization** -- Nolan tells the arbitration panel that he is unaware of any line of credit at Northern Trust that he signed &/or authorized to be signed on his behalf as follows –

13 Q. Did he discuss with you securing a line of credit
14 for the Hawaii investment?
15 A. No.

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Now – contradicting the testimony in the EDNY trial where Nolan claimed he was unaware of the 2003 Little Isle 4 Securities Pledge he signed, Nolan testified in 2009 that he signed the 2003 Little Isle 4 Extension of Credit.

See R33 500 -- Nolan confirms signing 2003 Little Isle 4 LOC documents during the 2009 arbitration

See R33 501 -- Nolan Little Isle 4 \$500,000 Extension of Credit 2003

This document was returned to Northern Trust after Kenner sent Nolan the entire 39-page Little Isle 4 LOC to his Toronto Ontario CANADA address in December 2003 before Nolan signed it and returned it to Northern Trust via FedEx per the Kenner instructions.

See R33 502 -- Nolan 39-page fax cover sheet of Dec 2003

Please note that although Nolan claims he does not know what a “**pledge**” is – in Nolan’s December 2007 texts with Kenner regarding the re-signing of the LOC renewal paperwork – Nolan tells Kenner that he knows that his money is “**tyed up**” as follows –

46	+141699701 10 Owen Nolan*	12/28/2007 6:04:48 PM(UTC+0)	Read	Where's the package that needs signed plus jp needs 200000 for toronto settlement <u>where r we</u> <u>getting that money since</u> <u>everything is tied up</u>
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- *In Nolan's own words* – Nolan confirmed that his \$3mm account at Northern Trust is pledged or “**tied up**” at that time...

If it were not pledged (or whatever Nolan would have called a Pledged account) – then Nolan would not have been concerned where the \$200,000 would come from that he owed his hockey agent with over \$3mm in his Northern Trust bond account. **THUS -- MORE CLEAR Nolan PERJURY...**

All of the documents returned by Nolan and Juneau in December 2003 have ***fax time and date stamps*** on them confirming they individually received the documents from Kenner in December 2003 and mailed the signed pages to Northern Trust separately (via Kenner's FedEx account) for the new Little Isle 4 LOC.

- Northern Trust clearly received the LOC documents from Juneau and Nolan via FedEx -- since Northern Trust funded the Little Isle 4 LOC before the December 23, 2003 closing of the first Hawai'i 258-acre parcel for \$720,000.

See R33 503 -- Original Hawaii 258 HUD-1 signed by Manfredi (not Kenner)

- ***CRITICAL -- Please note that AGAIN -- a copy of all of the closing docs from Hawaii were in each investor's possession from Kenner after the recording -- as evidenced by Nolan's own bate stamp from the 2009 Arbitration...clearly refuting the government's CONCEALMENT THEORIES...***

None of the December 2003 LOC documents by Juneau or Nolan were signed in Kenner's presence; thus, there was no duress for this NEW transaction between the parties. In addition, since the Northern Trust accounts were new and opened specifically to support the underlying LOCs, Nolan and Juneau had also signed NEW investment account documents for Northern Trust in the previous month to prepare for the LOC opening.

Juneau and Nolan each had **ALL** of the Northern Trust contact information in their possessions in case there was something about this LOC setup they were not familiar with.

Despite all of the signatures by Juneau (*as well*) – Juneau also claimed at the EDNY that he was unaware of the LOC with Northern Trust until sometime in 2006 as a result of a renewal – which would have been signed annually from 2003 thru 2006.

- *Please note that the Little Isle 4 LOC documents were not returned as part of the Northern Trust subpoenaed request pre-trial* – which would have confirmed over a dozen signatures by Juneau from 2003 thru 2006.

See R33 504 -- Juneau attempts to claim he was unaware of the Little Isle 4 LOC

See R33 504a -- Kenner-Juneau Northern Trust emails

- If Juneau did sign the documents (*with the loan confirmed thru his own email chain in the EDNY*) and correctly did not remember and truthfully replied – how can Kenner be held criminally liable for documents Juneau signed 12 years before the EDNY trial but simply cannot remember (*despite his knowledge of the LOAN/investment in*

Prosecutorial Misconduct for Rule 33

2005)? Perhaps – it was from Juneau’s selective amnesia &/or his lack of knowledge is a result of early-onset CTE (*like the NFL football players who cannot remember anything and face depression and suicidal feelings from multiple concussions*).

- Juneau had his jaw broken twice from severe collisions while playing professional hockey after 1992 – thus has suffered multiple concussions as a result...
- This issue could be prevalent in each of the government witnesses who played long NHL careers and suffered repeated, multiple concussions.
- Please note that Rucchin missed over one full year recovering from multiple and severe post-concussion syndrome.

Just like Nolan (*who had over 100 career fights in the NHL alone and multiple concussions*) -- the following were the original documents that Juneau signed and returned via FedEx to Northern Trust bank in December 2003.

Similar documents were signed annually until 2007 (*by Nolan and Juneau for the Little Isle 4 LOC*) – until the time when Juneau requested to leave the Little Isle 4 investment and Nolan bought out his interest. Nolan acquired Juneau’s equity in Little Isle 4 (*reflected on Nolan’s Little Isle 4 tax records and loan history reports*).

- Please note that the Loan History reports were generated for the first and only time in or about October 2009 by Mascarella two (2) months after the signed and notarized requests were delivered to Northern Trust due to the ongoing conflict with Northern Trust – as a result of Nolan and Jowdy's harassment.
- Mascarella generated the loan history reports for the first time seven (7) months after the collateral seizures – despite the government misrepresentations of them throughout the trial.

See R33 505 -- Peca notarized request to NT for Loan History Report

Confirming the Juneau buyout by Nolan – Nolan originally had a 13.44% equity on the Little Isle 4 operating agreement signed in April 2006.

See R33 490 -- 2006 Little Isle 4 Operating Agreement (all SIGS)

...And when the Little Isle 4 Juneau buy out occurred in 2007 shortly after the Lehman Brothers closing – Nolan ended up with ***INCREASED*** equity of 17.6516% on his 2006 (*filed in 2007*) K1 from Little Isle 4. ***The 4% increase was due to the Juneau buy out...***which represented almost all of the post-closing disbursements from the Nolan LOC...

See R33 495 -- Nolan 2006 LI4 K1 (2.3mm)

Juneau signed for the Little Isle 4 LOC in December 2003 the following --

1. Juneau 2003 Control Agreement

Prosecutorial Misconduct for Rule 33

See R33 506 -- Juneau 2003 Control Agreement

2. Juneau 2003 Little Isle 4 Pledge Agreement

See R33 507 -- Juneau 2003 Little Isle 4 Pledge Agreement

3. Juneau 2003 Statement of Purpose of Credit

See R33 508 -- Juneau 2003 Statement of Purpose of Credit

Signed by Nolan in 2003 –

1. Nolan 2003 Control Agreement -Entire Securities Account

See R33 509 -- Nolan 2003 Control Agmt-Entire Securities Acct

2. Nolan 2003 Pledge Agreement

See R33 510 -- Nolan 2003 Pledge Agreement

3. Nolan 2003 Statement of Purpose of Credit – *which is the document that Nolan confirmed his signature in the 2009 Arbitration (above)...*

See R33 501 -- Nolan Little Isle 4 \$500,000 Extension of Credit 2003

Please note that several different bankers at Northern Trust in 2003 counter-signed on the original Little Isle 4 LOC notes (*see above signatures*) and paperwork who were not called at the EDNY trial to support the government's theory that Juneau and Nolan had not authorized the initial LOCs (*despite overwhelming evidence to the contrary*).

- ***Not only were the LOCs authorized but Nolan and Juneau signed them individually without Kenner present and returned them independently to Northern Trust via Kenner's FedEx account.***

Please note that ***NOTHING*** at Northern Trust was signed by Kenner to open any of the individual's LOCs – despite the government's proffers thru chronically misleading questions about individuals “***authorizing Kenner to open LOCs in their names***” – *in an unrelenting attempt to baffle the jury.*

Nolan misleading testimony from the EDNY --

Prosecutorial Misconduct for Rule 33

17 Q Did you ever authorize Mr. Kenner to open up a line
18 of credit in your name?
19 A No.
20 Q Did you ever authorize Mr. Kenner to open up a line
21 of credit in a company called Little Isle IV?
22 A No.
23 Q What about if there was a company called Little Isle
24 IV and you and Mr. Joe Juneau and Mr. Kenner were somehow
25 vouching for a line of credit in Little Isle IV, do you
Owen M. Wicker, RPR
Official Court Reporter

2066

1 have any memory doing that?
2 A No.
3 Q Did there come a time that you learned that a line of
4 credit had been opened in your name?
5 A Yes.

The representation of these questions by the government implies that Kenner (not the individual clients) opened the accounts for the clients and they were unaware.

It was extremely prejudicial to the defense and 100% calculated by the prosecution to mislead.

The government did call **former** Northern Trust employee Aaron Mascarella, who confirmed that while he was involved in the LOC account process including the multiple DEFAULTS. Mascarella testified that he was confident that copies of the monthly statements went to both Kenner and the clients (as some of them were received in the EDNY subpoena as well.

See R33 511 -- Mascarella confirmed LOC statements went to clients and Kenner

- Mascarella does NOT tell the court that Kenner instructed him (or anyone at Northern Trust to hide the monthly statements from their own clients – in violation of the 2001 Patriot Act)...despite the government's misleading proffers.

When Mascarella was asked if he received any communication from the LOC clients after either the February 2009 Notice of Pending DEFAULTS &/or the March 2009 final warning of DEFAULT and SEIZURE of collateral, Mascarella confirmed that **NO ONE** contacted him or the bank...**NOT ONE** LOC client.

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See R33 512 -- Mascarella confirmed that NO LOC clients called him after sending out the February 2009 and March 2009 LOC default letters

In fact – when Mascarella tried to cover for the government to claim that, perhaps, as many as two of the DEFAULT letters came back from the client mailings, the bank did **NOTHING** to correct this.

That is systematically not believable and would lead to fiduciary negligence at a minimum for a Federally Chartered Bank under the “know your client” rules under the 2001 Patriot Act.

“**DOING NOTHING**” to inform their clients about the seizures could be clear grounds for a lawsuit against Northern Trust Bank for negligence...BUT Mascarella knew he needed to “**add**” something to his testimony as follows --

20 THE WITNESS: I have something to add. These
21 letters were mailed out but not all of them reached their
22 intended destination.
23 Q How is that?
24 A Addresses changed, we got some of the letters back.
25 They were returned mail.

Please note that each LOC client from Northern Trust confirmed at the EDNY that his addresses on the DEFAULT letters were correct.

See R33 513 -- Mascarella claims doing nothing about returned DEFAULT letters

Please note that Mascarella (“Erin” or “Aaron”) was one of the Northern Trust persons that “**each**” LOC DEFAULT client **HAD** to speak with by early April 2009 to confirm the **seizure of their LOC collateral** (in lieu of making personal monthly payments – like Nolan did) and their **individual request to have all of the accounts closed and transferred**.

Sydor, Michael Peca and Rucchin all confirmed their calls with Northern Trust via text with Kenner.

See R33 514 -- Text confirms with Kenner re – Northern Trust LOC seizures

- Please note that the Peca funds (*collateral*) were taken on the same day that Peca spoke to Northern Trust. He obviously was 100% aware of the transaction, since he was on the phone with Northern Trust bankers (*Catherine Brill, Aaron Mascarella & others*).

As evidenced by the Peca 10-19-09 Loan History report produced by Northern Trust bank & Aaron Mascarella after the Peca signed and notarized request to the bank.

Prosecutorial Misconduct for Rule 33***See R33 515 -- NT 2009 Peca LOC Loan History Statement***

Please note that the government made a COLOSSAL spectacle at trial about Kenner having the Loan History reports (*from 7 months after the LOC seizures – solely based on the clients signed and notarized requests – **THUS NOT CONCEALED***) out of the 2 million PLUS documents that the government seized from Kenner's home office.

Each of these History reports were generated by Mascarella after the LOC clients signed and notarized requests for Northern Trust. Mascarella (&/or Northern Trust) never produced a report like this prior to the October 2009 requests.

- It should be keenly noted that the government produced the Nolan Loan History Report from October 2009 during the EDNY trial – although Kenner was NOT in communication with Nolan at the time (*post-arbitration*) – thus anyone that had an account had 100% access to the ***Loan History Statements***.

In fact – if the Northern Trust LOC issues SHOCKED Kristen Peca – *as she claimed at the EDNY* – they not only had access to Mascarella but they had direct access to Kaiser – the active Managing Member of Na'alehu Ventures 2006 (*Hawai'i*) per the following June email (*only a month after the GSF meeting*)...

See R33 516 -- Peca and Kaiser email re-- Hawaii Managing Member

They never confronted Kaiser about the Hawai'i LOCs or their apparent SHOCK...even during Kaiser's face-to-face meeting in Buffalo...

Kenner even paid for the Kaiser trip to and from Buffalo for the face-to-face meeting with Michael Peca and Kristen Peca...THUS –supporting the fact that Kenner had nothing to CONCEAL about the Hawai'i deal &/or Michael Peca's LOC.

- Please note that Kaiser had already testified in the Nolan arbitration (*May 2009*) and knew about the erroneous \$2mm buyout verdict (*due to Nolan's alleged "no knowledge" of the Hawai'i investment*) by the time of the Peca meeting...and still – NO PROBLEMS...

See R33 517 -- Kenner paid for Kaiser flights to meet Michael Peca and Kristen Peca after LOC seizure

In addition to the phone call about the DEFAULT and subsequent transfer of funds to another bank account that belonged to Michael Peca at Charles Schwab – Kenner notified Peca of the pending DEFAULT letters in February 2009 (*at the time of the first notification from Northern Trust*) as follows –

6350	+171637432 34 Michael Peca*	2/10/2009 8:13:58 PM(UTC+0)	Sent	Northern Trust sent you a letter. Call me when you get it	
------	--------------------------------------	--------------------------------	------	--	--

Prosecutorial Misconduct for Rule 33

This unambiguously contradicts the government's position that it was Kenner's FAULT with Kristen Peca that she was not informed about the DEFAULT letters.

To the contrary – Kristen Peca was not Kenner's client, only Michael Peca was.

Thus – any information that Kristen Peca was **NOT** aware of was her husband's problem &/or responsibility – ***not Kenner's fault.***

When Kristen Peca asked Kenner on the 2012 recorded call about not informing her, Kenner chose to maintain his loyalty to his former client, Michael Peca, and simply say **SORRY**, instead of blowing up the call, stopping any information Kenner could obtain about the FBI and Galioto's tortious allegations about him to Kristen Peca, and destroy his relationship with Michael Peca by "**ratting him out**" about the known communication regarding the Northern Trust DEFAULT letters.

- ALSO – Please note that the government **NEVER** returned the Kenner emails from his computer during the 19 months of pre-trial. Kenner still does not have access to the original iPhone or laptop with all of the Kenner emails – three (3) years after Kenner's arrest of November 2013.

All of the text message evidence included (*above*) supports the fact that Kenner had tremendously OPEN communication with his clients and their collective knowledge of the Northern Trust LOC deal in Hawai'i.

The evidence is also overwhelmingly supported by documents signed by the clients directly with Northern Trust.

- Please note that the Apple iPhone was launched in late 2007 – thus any text communication between Kenner and his clients prior to that date supporting the OPEN communication of the LOCs and their connection to Hawai'i &/or the loans to Jowdy from 2004-06 would not have been stored.
- With that premise in mind – the corroborating evidence ***of Kenner's full disclosure*** by text between Kenner and Nolan above was only the "**38th**" text by Kenner out the approximate 89,000 texts that the government turned over.

3 8	+141699701 10 Owen Nolan*	12/23/2007 7:09:24 PM(UTC+0)	Sent	The papers are for your Line of Credit at Northern Trust. The Bank sent them to me for the renewal of the LOC on friday and said they MUST be signed and returned by end of year. Its not just you. All of the guys have to do it. I don't make these rules. Where can I send them for next Wednesday or thursday fedex delivery?? Pk	
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Prosecutorial Misconduct for Rule 33

Prosecutorial Misconduct for Rule 33***Ranford knowledge of GSF funds and Eufora investments –***

In September 2014 – twelve (12) months after the Kenner Indictment and arrest – William Ranford was deposed as an Intervener in the 2012 (*Kenner filed*) AZ case versus Berard and Kaiser for stealing (*fraudulent conveyance*) the AZ renovation project title from Kenner (*grudgingly dismissed by Kenner due to the EDNY arrest and detainment*). Kaiser and Berard were trying to avoid paying the five (5) individuals who loaned the project money with Kaiser's signed Promissory Notes (*claimed as forgeries as their collective defense*) –

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA	
IN AND FOR THE COUNTY OF MARICOPA	
PHILLIP A. KENNER, TRUST) NO. CV2012-055576
BENEFICIARY, THE SHANGRI-LA)
TRUST 1999,)
)
Plaintiff,)
vs.)
)
JOHN KAISER, TRUSTEE, THE)
SHANGRI-LA TRUST 1999;)
JOHN KAISER, a married man;)
ELIZABETH KAISER, a married)
woman; JOHN AND JANE DOES I-VII,)
)
Defendants.)
JOHN R. KAISER, a married man as)
his sole and separate property;)
BRYAN BERARD, an unmarried man,)
)
Counterclaimants.)
vs.)
)
PHILIP A. KENNER, a single man,)
)
Counterdefendant.)
TYSON and KATHY NASH, husband)
and wife; DARRYL SYDOR; JERE)
LEHTINEN; DIMITRI KRISTICH;)
WILLIAM RANFORD,)
)
Interveners.)
DEPOSITION OF WILLIAM RANFORD	
Phoenix, Arizona	
September 17, 2014	
8:37 a.m.	

5
Interveners...versus
Kaiser and
Berard...for FRAUDS

During the deposition a year after Kenner's Indictment and ongoing detainment – Ranford confirmed that Kenner was still his financial advisor.

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Kenner must have generated a lifetime of trust with Ranford for anyone to still publically consider and declare Kenner his advisor after being indicted, arrested and detained by the FBI (*without bail*) for alleged financial crimes over a year prior. This is not the statement of an individual who allegedly struggled to get paperwork and heard an excuse about a crashed computer from Kenner – as testified to in the EDNY (*under FBI duress*).

See R33 518 -- Ranford confirmed Kenner was still advisor one year after arrest

Ranford also confirmed in the September 2014 AZ deposition – eight (8) months before Ranford testified at EDNY – that he was aware of the various transfers related to his GSF contributions.

See R33 519 -- Ranford confirmed GSF deposits and withdrawals

- ***Ranford did not claim that he did not make the \$100,000 deposit,***
- ***Ranford did not claim that he did not receive the \$100,000 back &/or***
- ***Ranford did not claim that he did not send the follow-up \$300,000 deposit to the GSF.***

BUT in the EDNY eight (8) months later – Ranford untruthfully claimed by completely changing his story -- after telling Kenner during a 2015 (*pre-trial*) phone call that Galioto had been threatening him to testify adverse to Kenner in the EDNY &/or be subject to losing his ability to work in the USA. Ranford is a Canadian citizen working in Los Angeles, CA.

- Please note that these are the same threats from Galioto that Sydor and Nash disclosed to Kenner on the phone (*pre-trial*) – as well as Norstrom and Stumpel (*two planned, pro-Kenner witnesses who were scared away as foreigners*).

One year after the Northern Trust LOC seizure (*in April 2009*) – LOC client, Mattias Norstrom, was still making plans (*like Peca and the other Kenner clients*) to spend personal time with Kenner – and certainly not the actions of someone who felt defrauded of over \$1mm of collateral through alleged Kenner lies &/or deceptions –

13 68 3	+467088 74363 Mattias Norstrom *	6/4/201 0 1:42:37 PM(UTC+0)	Read	<i>Good news! We're at Gotland (Sweden island) gettin the place ready for the summer and your visit! //Matti</i>
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See R33 520 -- Ranford claims to the EDNY he is not aware of GSF contributions

Not only did Ranford's EDNY testimony **CONTRADICT** his own September 2014 deposition but it also **CONTRADICTED** his September 7, 2012 phone interview with agent Galioto.

See R33 521 -- Ranford told the FBI 3 years before the EDNY that he gave the GSF \$300,000

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Thus – at the time of the 9-7-2012 interview with the FBI – per the Ronald Richards GSF Spreadsheet shared with all of the GSF contributors by Kenner (*and testified to by Nash, McKee, Michael Peca and others at the EDNY*) --

See R33 521a -- RR-GSF-Constantine

Ranford clearly knew that \$100k went to the GSF,

6/5/09	William Ranford Individual	\$100,000.00
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...Minus \$100k which was transferred back to Ranford after speaking with Kenner again a few days later –

6/12/09	William Ranford Individual	(\$100,000.00)
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...And after a face-to-face meeting in LA a month later – Ranford transferred \$300,000 to the GSF account of Ronald Richards –

7/13/09	William Ranford Individual	\$300,000.00
---------	----------------------------	--------------

THUS – Ranford –JUST LIKE his September 2012 proffer confirmed – ***sent NET \$300,000 to the GSF --***

After Kenner returned the original \$100,000 to Ranford when Ranford requested a face-to-face meeting to discuss the issues and objectives of the GSF – Kenner flew to Los Angeles to meet with Ranford on July 12, 2009 -- the day before Ranford agreed to the subsequent \$300,000 contribution (*which Ranford also confirmed to the FBI in 2012 – during his phone proffer*).

See R33 522 -- Kenner flights and expenses for face-to-face Ranford GSF meeting

After receiving Ranford's approval on the July 13, 2009 – the \$300,000 was transferred to the GSF...BUT – Ranford at the EDNY went on to falsely testify and following the government lead about \$400,000 invested (*again – despite his 2012 proffer and 2014 deposition to the contrary*).

See R33 523 -- Ranford \$400,000 GSF fraud claims

The government actually tried to allege \$400,000 was sent to the GSF when they were aware of the September 2012 proffer and the September 2014 deposition (*in Ranford's 3500 materials*)...

The government was also aware of the Ronald Richards tracking spreadsheet and the supporting Ronald Richards bank records in EDNY evidence...This was simply more premeditated confusion that the defense had to unreasonably undo during Cross-examinations.

Prosecutorial Misconduct for Rule 33

During Cross Examination of Ranford – Haley confirmed that the wire confirmations had Ranford's address on them. Ranford confirmed that he is a "paper rat" because of his concerns for tax audits -- BUT claimed he never received (or saw) the Schwab confirmations.

- Please note that Schwab and Greenberg Graham (*on behalf of Ranford's Schwab account*) would not have transferred the Ranford funds unless Ranford gave a verbal approval for the transfers – even after Kenner submitted the Power of Attorney transfer requests.

See R33 524 -- Ranford denies seeing Schwab confirms for wire transfers

Despite the transfer confirmations all being mailed to Ranford's residence & his self-proclaimed "paper rat" status -- Ranford stuck to the freshly molded government theory that Ranford was unaware of the wires (*after being threatened by Galioto pre-trial – just like Nash, Sydor, Stumpel and Norstrom also told Kenner on the phone*).

Despite Ranford's consciousness of the GSF transfers during the September 2014 deposition and the subsequent confirmation call with Kenner about the Galioto threats also after the September 2014 deposition (*pre-EDNY trial*) – Ranford claimed –

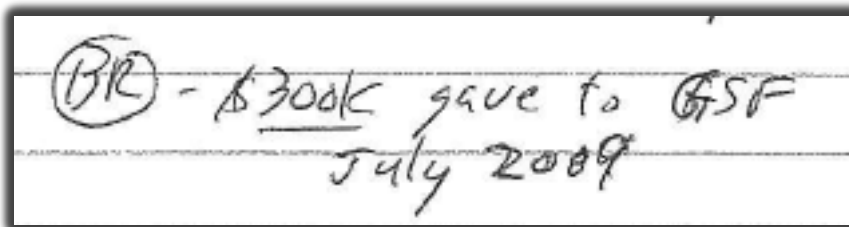
"...I never saw that document"

...Ranford claimed he never saw the multiple confirmations (*\$100k out, then \$100k returned, then \$300k out*) despite his Charles Schwab monthly statements reflecting the alleged fraudulent and unknown transfer...and also being mailed to the same mailing address Ranford confirmed as correct at the EDNY trial.

In a last ditch effort to stick to revitalize the government's theory – Ranford claimed his 2012 FBI proffer notes were incorrect.

See R33 525 -- Ranford claims he NEVER told the FBI he sent \$300k despite the FBI notes

...But irrefutably – the FBI wrote Ranford disclosed the following on 9/7/2012 to the FBI agents –



(BR) - \$300k gave to GSF
July 2009

At the end of the AZ 2014 deposition – the attorneys for Jowdy, Berard and Kaiser asked Ranford –

Prosecutorial Misconduct for Rule 33

17 Q. Are you aware that Phil Kenner's been
18 indicted on charges in the Eastern District of
19 New York?
20 A. Yes.
21 Q. Alleging that he's been -- he's forged
22 signatures and improperly used money that was given to
23 him for other projects?
24 A. I do not know what he's indicted for. It's
25 just I knew he was.

Despite Ranford's fabricated and deliberate EDNY testimony – Ranford did not seem to be too concerned about the Kenner allegations – considering Ranford still considered Kenner his financial advisor while Kenner was in jail during pre-trial.

At the end of the Ranford deposition about the Kaiser and Berard thefts in AZ – the Jowdy, Berard and Kaiser attorneys further disclosed the Indictment issues to which Ranford also responded nonplussed.

See R33 526 -- Ranford NOT concerned in September 2014 about Kenner allegations

Instead – at the EDNY Ranford claimed Kenner gave him “**broken laptop excuse**” at their last meeting.

See R33 530 -- Ranford's false “broken laptop” testimony at EDNY

- Please note that the meeting was specifically held at the Starbucks on Rosecrans in Manhattan Beach, CA because Kenner could access the Internet on his laptop to show Ranford all of the legal correspondences with the México attorneys, the México federal websites with the current legal activity, and the Jowdy pending actions.

This testimony was a set-up, so the government expert could claim when he recovered Kenner's laptop a few weeks later during the search and seizure that it was functioning.

There is not one text, email &/or other request from Ranford, EVER (& *certainly not in EDNY discovery*), that would substantiate his demand for paperwork **unfulfilled by Kenner.**

Ranford was in direct communication with Attorney Stolper in NY related to the Eufora litigation efforts versus Constantine and with Kenner two-weeks before Kenner's arrest – face-to-face in LA.

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Ranford gave another FBI proffer on June 25, 2014 (*prior to his AZ deposition of September 2014*) and NEVER claimed that he was concerned about paperwork or alleged that Kenner claimed he had a broken &/or crashed laptop hard drive...

During Kenner's incarceration at the GEO facility in Queens NY pre-trial, Kenner spoke with Ranford several times on the phone after his September 2014 AZ deposition.

Ranford informed Kenner that he was receiving recurring "***demands***" by Galioto to drop his AZ litigation versus Kaiser and Berard -- and in turn sue Kenner for the promissory funds.

After Ranford refused to follow Galioto's "***order***" – Ranford told Kenner on the phone that Galioto threatened to have his ability to work in the USA revoked (*and be returned to Canada*) if he did not testify against Kenner according to Galioto's theories at the EDNY trial.

These were identical AZ lawsuit and deportation threats that Nash and Sydor independently confirmed to Kenner on subsequent phone calls.

- Please note that Jere Lehtinen – one of the five (5) AZ Interveners – decided to drop his case versus Berard and Kaiser due to the overwhelming harassment by Galioto and the incessant deportation threats. Lehtinen would have recovered about \$100,000 from the litigation. As a result of Lehtinen's dismissal – Berard and Kaiser fraudulently received those funds (*which belonged to Kenner – in 2nd position behind the 5 Interveners*).

FBI agent Galioto was working diligently on behalf of Kaiser, Berard and Jowdy's AZ attorney to defend the AZ Kenner litigation & all of the Interveners including Ranford, Sydor, Nash, Khristich and Lehtinen while instructing Berard and his attorney to not answer questions during his AZ deposition on October 9, 2014 –

Page 12 –

Attorney Baker Q – When did you first meet Phil Kenner?

Berard A – What does that have to do with this case? I do not feel like I have to answer that.

Baker – Well, you do sir.

Berard – Why?

Baker – Because I am asking it.

Berard – I don't think – we're gonna – do I go ahead? Compared to the ongoing Indictment with Phil Kenner –

Baker – When did you first meet Phil Kenner?

Berard – I don't recall. I don't recall.

Prosecutorial Misconduct for Rule 33

Berard's attorney (Ms. Lavonier) – Mr. Berard's been instructed not to answer that question by the FBI.

Berard – Correct.

Baker – The FBI has instructed him not to answer the question when he first met Phil Kenner?

Lavonier – Yes.

Notwithstanding the fact that the AZ judge found Kaiser and Berard to be LIARS regarding their forgery defense –

See R33 055e -- AZ ruling -- Kenner v Kaiser

49. Kaiser and Berard ratified allegedly forged signatures by their signing of subsequent documents which relied upon the allegedly forged documents. Kaiser alleges that his signature was forged to exhibit 38, the Shangri-La Trust 1999. However, Kaiser then executed a number of recorded documents as the Trustee of the Shangri-La Trust 1999. Kaiser could not have done this without the Shangri-La Trust 1999 agreement and his appointment as the Trustee. Berard testified that his signature on the Power of Attorney – Special (exhibit 25) and Deed of Trust (exhibit 26) were forged. However, Berard signed a number of recorded documents as a grantor, including the Quit Claim Deed transferring the property to John R. Kaiser, Trustee of the Shangri-La Trust 1999 (exhibit 27).

50. Sydor, Ranford and Khristich had valid amounts and on the terms set forth within their respective 8224 North Golf Drive, Paradise Valley, AZ as described. The principal and interest due on the

Berard claimed FORGERY -- echoing the Kaiser fraudulent claims in the AZ case and the EDNY...

And were found to have stolen (**fraudulent conveyance – which is criminal if Kenner had done it**) the title to the AZ renovation project from Kenner –

57. The March 9, 2012, conveyance of the property by John R. Kaiser as Trustee of the Shangri-La Trust 1999 to "John R. Kaiser, a married man, as his sole and separate property and Bryan Berard, an unmarried man" (exhibit 29) was a fraudulent transfer. A.R.S. §44-1004(A). The Interveners are therefore entitled to avoid the transfer or obligation to the extent necessary to satisfy their claims, and to enforce the claim against the proceeds of the sale of the property without regard to any interest that Kaiser or Berard may have acquired as a result of the conveyance.

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This is the same CRIME that Kenner sued Kaiser & Berard for in Sag Harbor (2013) after the same theft of the Kenner-controlled LLC by fabricated & FORGED docs...

Kaiser & Berard were GUILTY of a fraudulent transfer (THEFT) of the title away from Kenner -- but no criminal FRAUD charges by Galioto...

When Berard was asked about the forgeries in his October 9, 2014 deposition – Berard responded as follows –

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Intervener Attorney Baker – Well, it says here you're alleging allegations of fraud, scheme to defraud, forged signatures on documents, and monies spent on things other than what it was to be used for. Is that your position in this case?

Berard – That's my position. *Phil Kenner is sitting in jail with no bail, so I think a judge in the Eastern District feels pretty – pretty good about that as well.*

-- Berard hard copy deposition available upon request (recovered after the EDNY trial -- Rule 33 materials)--

- Please note that although the Ranford deposition was in the FBI 3500 notes from September 2014 – neither the Berard nor Kaiser depositions were included by the FBI and not learned about by Kenner until after the EDNY trial concluded.

Ranford ***PERJURES*** himself again regarding his Eufora investments – ***under the continuing duress from Galioto*** –

Related to the Ranford Eufora investment – Ranford also tried to allege that he was unaware of the funds that were wired for his Eufora investment as follows --

See R33 531 -- Ranford denies knowledge of his Eufora investments – contradicting his 2012 FBI proffer with Galioto

Despite this prepared testimony by Ranford – his previous FBI proffer from September 7, 2012 confirmed all three (3) investments in Eufora.

See R33 532 -- Ranford 2012 FBI proffer contradicts his planned EDNY testimony (while under duress)

MIND-BOGGLINGLY – and consistent with the same fraudulently manipulated proffer notes like the Gaarn Eufora transfer date fraud (***see EDNY – Gaarn issues report – and -- below***) – Galioto (*or someone with access to the documents*) tries to alter the Eufora investment amount from \$400,000 like Ranford said -- to something else (***\$300,000***)...when viewed at 400% normal size.

See R33 533 -- Ranford perjures himself about his Eufora investments (under duress)

CLEARLY – someone with access to the FBI notes wrote a “3” for \$300k over the “4” which was the proper amount for \$400k...and again – this cannot be coincidence like the Gaarn altered FBI notes...

See R33 534 -- Gaarn proffer notes “altered” to corroborate government theory and refute all other evidence in the government’s possession pre-trial

Prosecutorial Misconduct for Rule 33***The “grocery list” claims & frauds against Kenner (by Kaiser, the government)***

Related to the Eufora equity and the Kenner \$2mm+ in advances to Constantine (*thru 2009*) – which Kaiser and the government purposely misled the jury and claimed as a “**shopping list**” &/or “**grocery list**” at trial fraudulently belonging to Kaiser – Kaiser actually told the FBI and AUSA that **Constantine was not aware of the Kenner funds belonging to Kaiser** – *which was the truth.*

DUE TO THE FACT that Kaiser was fully repaid from the CA renovation project by mid-2008 (*long before the Gaarn wires*) by Kenner -- Kaiser **GROSSLY PERJURED** himself (**with the government's knowledge**) thru calculated and premeditated testimony in the EDNY about his involvement in the “**grocery list loans**”, Kenner's **Cabo house equity** &/or the Kenner's **20% Eufora shares** expected from Constantine -- notwithstanding Kaiser's untruthfully alleged and unrecovered CA renovation house proceeds leading to the government's false claims of “**intent**” of wire fraud in **Counts 2, 3 and 4.**

See R33 546 -- Kaiser LIES about CA proceeds – after being fully repaid

All of the Board Members of Eufora knew -- *before the investigation of Constantine started* – that Kenner was waiting on the 20% transfer of stock from Constantine for the “**grocery list loans**”.

There was another issue with the Falcon 10 (*same plane as in the EDNY forfeiture hearings*) in early 2010 with Jowdy while Constantine and Kenner were trying to get the plane back from Jowdy's control before repossession (*which Jowdy and Harvey eventually and maliciously denied*).

During a text exchange – Gaarn confirmed to Kenner that not only was Kenner expecting to receive Kenner's fair share of the Falcon (*which Constantine fraudulently withheld from Kenner – despite Kenner's ongoing guarantee of the plane – post-GSF -- and the largest original cash investor*) – but also Gaarn was aware of the pending Eufora share transfer to Kenner.

12 46 3	+1201970 8712 Tim Gaarn*	3/5/201 0 12:34:5 1 AM(UT C+0)	Rea d	<u>Point being if it was tech ur plane it should b added to ur coming piece of Eufora.</u>	
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Constantine offered Kenner 12% (*instead of 20%*) of Eufora in his “**olive branch**” negotiations in the Eufora August 2010 proposed operating agreement --

See R33 439 -- EUFORA LLC_DE Operating Agreement dated as of 08-05-2010 (page 43)

Two items are very clear --

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One – Kenner had shares of Eufora in March 2010 that Constantine had not yet transferred to him. Kenner had agreed with Constantine to exchange the entire “**grocery list loans**” for the 20% Eufora shares. None of the shares *belonged to Kaiser -- who was working with Gaarn at the time (assisting the Stolper investigation)*.

- This also contradicted the government's allegation that Kenner knew Eufora was a sham &/or the “**grocery list loans**” belonged to Kaiser.

Two – Gaarn (and the other investigators – Stolper, Hatzimemos, Libby, Kaiser, Berard and former Eufora CEO Gentry) were all aware of the pending 20% Kenner transfer from Constantine – making Kenner one of the largest shareholders of Eufora in 2010.

At the same time – Gaarn and Berard (with Kenner) were working on additional deals (with the Rockefeller Foundation – “Rock” -- and others) – **thus very unified** – refuting the EDNY claims by Berard that he no longer trusted Kenner – one year earlier.

From Gaarn to Kenner –

12 27 9	+120197 08712 Tim Gaarn*	2/23/20 10 4:49:48 PM(UT C+0)	Rea d	On w Bryan's guy on Conf Call w Rock now. Call u when done.	
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From Berard to Kenner –

12 28 0	+140152 46929 Bryan Berard*	2/23/20 10 5:31:17 PM(UT C+0)	Rea d	I did talk wth Tim yesterday and I gave Peter McLaughlin (andys brother) toms #. so hopefully they speak today and go from there	
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Then -- the government explains their misguided theory that Kaiser received funds from Gaarn – “*because Kenner has not repaid Kaiser his funds from the CA renovation project*”.

That is clearly not true – and as a result the wrongful basis for the repayment theory by the government prejudices Kenner – and could **NOT** be the basis for Counts 2, 3 and 4 – as Michiewicz proffered to the Court and Jury.

See R33 014 -- \$1.7mm REPAYMENT fraud...Kaiser CA funds

In fact – the government and Kaiser created a back-story that somehow alleged that Kenner (who wired funds daily as part of his 20-year management business) instructed Gaarn to send two (2) wires within two (2) weeks to Kaiser “**by mistake**” and subsequently demanded that Kaiser immediately return the funds to Kenner – *in lieu of the truth* – which was for Kaiser to borrow the funds from Gaarn that he needed to continue contributing to the joint

Prosecutorial Misconduct for Rule 33

AZ project with Kenner – and then forward the funds to Kenner to pay the daily bills for the AZ renovation – which Kenner was in charge of.

Gaarn was confirming to Kenner that he did not speak to John (*Kaiser*) after he tried to send him the loaned funds –

541 2	+120197 08712 Tim Gaarn*	2/12/2009 12:26:16 AM(UTC+0)	Rea d	Never came back. <i>Not sure if wire went out. Didn't speak to John</i> , at work now, call u later tonight.
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- Please note that Gaarn and Kaiser were in AZ at Kenner's home together for a few days just prior to the loans to Kaiser. Text message traffic between Gaarn and Kenner the day of the first transfer confirms Gaarn was trying to get a hold of Kaiser (*above*).
- Gaarn had flown to AZ from New Jersey for a Eufora Board meeting – further confirming that Gaarn was not a “**puppet**” doing whatever Kenner told him to do – as the government had Gaarn testify to.
- *In addition* – Gaarn had never sent Kaiser a wire before these two (2) February 2009 transfers – so it would be highly improbable that Kenner would have sent wire instructions to Gaarn to send money to Kaiser – if it was a mistake all along and not supposed to happen.

See R33 547 -- Government claims Kaiser was not repaid from CA renovation proceeds

Gaarn had been dealing with Constantine and others related to serious and significant people as evidenced by the mid-2008 text from Kenner to Constantine –

682	+160236356 76 Tommy Constantine*	5/1/2008 4:04:08 PM(UTC+0)	Sen t	<i>Tim wants u to speak to the worldwide head of Wyndam in the next 24. Pk</i>
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Despite Gaarn’s EDNY “**dopey-dope**” routine – Gaarn was working on global deals with the world-wide head of Wyndam Hotels, was the conduit for the original introduction to Lehman Brothers (*thru NY Billionaire hedge fund manager – Jeff Keswin*) and was finishing a development deal in 2010 between the Chinese government and the Rockefeller Foundation to build a replica Rockefeller Center in Beijing. ***Gaarn was NOT taking direction from anyone.***

- In fact – Gaarn was the person who hired Rudy Giuliani’s right-hand-man, Eric Hatzimemos, ex-CIA Agent, Oliver Libby and NY corporate attorney, Michael Stolper

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to head up the 2010 investigation of Eufora and Constantine without Kenner's knowledge &/or unnecessary consent.

Then – knowingly – the government alleges to the Court that the reason substantive counts 2, 3 and 4 are ***BECAUSE*** Kaiser was still owed money from the CA project in February 2009 (untrue – ***see R33 014 -- \$1.7mm REPAYMENT fraud...Kaiser CA funds***). Defense counsel laughed at the government theory knowing that Gaarn loaned the funds to Kaiser and Kaiser had been fully repaid by the time of the Gaarn February 2009 wires. Every statement by Kaiser and the government related to the fund transfers from Gaarn to Kaiser were a premeditated fabrication without foundation – further prejudicing Kenner and misleading the court and jury.

See R33 548 -- Government continues FRAUD about Kaiser not being repaid as the basis for Counts 2, 3 and 4

Kenner would have gladly litigated the Hermosa Beach funds issue to show Kaiser was CLEARLY lying – *with the government and Galioto's help while in possession of the Kaiser bank records* – to cover-up for the “***friends & family***” money that Kaiser stole and ***NEVER*** repaid despite being fully repaid by Kenner (*not just in CA but in Hawai'i in 2006*).

See R33 549 -- Kaiser defrauds “friends & family” with Galioto's knowledge with Frailes money

Frankly – Kenner was not aware of where the majority of the funds from Kaiser originated &/or the deals Kaiser had with his “***friends & family***” until years later when Kaiser began to tell Kenner that his “***friends & family***” were ready to sue him and was desperate to sell the AZ property (*just before he and Berard stole and sold the Sag Harbor (LedBetter, LLC) property from Kenner's Managing Member control*).

199 75	+16312350 308 John Kaiser*	2/17/201 1 8:40:28 PM(UTC +0)	Read	On the phone w / willy he is going to be suing me
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Please note that that Kaiser (*with Berard*) stole the Sag Harbor property two (2) months later with ***FORGED and FABRICATED*** documents on or about 4-18-2011 – per the time stamp from their fax to their closing attorney – while under duress from his “***friends & family***” loans.

See R33 055c - FAKE Ledbetter Operating Agreement (made by Kaiser and Berard for THEFT & SALE)

Kaiser lied about Kenner using his funds for a portion of Kenner's México house.

See R33 535 -- Kaiser false claims re – Kenner's México home

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Kaiser lied about the Eufora investment (*of either \$275,000 &/or \$2mm*) thru Kenner from the **“grocery list”** depending on which of Kaiser’s declarations are reviewed -- from the 2010 AZ case v. Constantine &/or the 2011 NY (*EDNY-Central Islip*) case v. Constantine.

See R33 536 -- Kaiser lies about the \$2mm in loans from Kenner to Constantine – AKA – “grocery list”

The meeting that Kaiser had with Constantine in the beginning of December 2009 was immediately after Privitello’s \$200,000 investment on or about December 3, 2009 – unknown to Kenner until Kaiser arrived in AZ (*after the Privitello transfers – all arranged thru Kaiser – as the EDNY evidence proved – despite the government’s false claims of Kenner conspiracy*).

Kaiser travelled to AZ in early December 2009 and told Kenner about the early December 2009 investment by Privitello (***Counts 5 & 6 – not guilty for Kenner***) – unknown to Kenner. Kenner informed Kaiser that he was not speaking with Constantine over the dispute of the \$2mm in Kenner advances to Constantine **“grocery list”** and the misappropriation of the GSF funds.

Kaiser was in a panic due to Privitello’s \$200,000 investment only a few days prior. Kaiser told Kenner that he was going to try and fix the problem with Constantine and get Kenner his 20% Eufora interest that Constantine promised Kenner (*also previously known to Kaiser*) – in lieu of the two (2) Las Vegas Penthouse deposits (*of \$656,000 each – the original Constantine collateral -- created by Constantine’s attorneys at Quarles & Brady for Kenner “grocery list” loan collateral...*).

See R33 436 -- Vegas PPP56 Prom Note to Kenner from Constantine

- Please note that Constantine originally transferred his equity deposits (*for the McKee and Peca units*) in his Las Vegas real estate to Kenner to partially collateralize the millions in Kenner’s personal advances (**“grocery list loans”**).
- Constantine had his attorneys at Quarles and Brady in AZ (*above*) draw up the new Las Vegas agreement with Kenner owning the Constantine interest as follows (*for Michael Peca’s unit*).
- ❖ Despite Constantine NEVER transferring the Eufora 20% (*or any portion of it represented to Kaiser in December 2009 – as exchanged collateral*) by Constantine to Kenner – Constantine actually claimed the Las Vegas deposit funds (*as well as the McKee deposit funds with the same collateral arrangement with Kenner*) in his 2012 bankruptcy filings in AZ – further deceiving Kenner from the **“grocery list”** loans (*of 2007-2009*) of both the Las Vegas collateral &/or the 20% Eufora equity.

See R33 537 -- Constantine bankruptcy fraud on Kenner claiming Las Vegas equity

In or about late 2009 – after Constantine was feeling **“strong”** financially again due to his self-perceived successes in the early litigation with Jowdy as a result of the GSF and his chance to broker a big Diamanté Cabo sale in the wake of the CA litigation (*with a future commission to be earned by Constantine of over \$10mm*) – Constantine told Kenner he wanted the Las Vegas penthouse interests back in exchange for the 20% Eufora equity.

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Kenner verbally agreed – but Constantine never transferred the 20% Eufora shares from Constantine's holdings despite the text to Kaiser in December 2009.

See R33 542 -- Constantine confirms 10% of 20% owed for \$2.2mm in ADVANCES

- ❖ Please note that Constantine then fraudulently claimed in his 2012 AZ bankruptcy filing he had not owned his Eufora shares since 2003 – in an attempt to avoid the future transfer and wash his "loan fraud" with Kenner – who was completely adverse to Constantine at that time.

See R33 538 -- Constantine fraudulent bankruptcy claim about Eufora stock ownership

In early December 2009– *unknown to Kenner at the time* -- Kaiser set up a meeting with Constantine while staying at Kenner's home in AZ – while working on the joint AZ renovation project (*before the title was fraudulently quit-claimed by Kaiser and Berard*).

Kaiser took Kenner's tracking list of loans -- *off Kenner's office desk unknown to Kenner for 6 days* -- to Constantine (*the EDNY "grocery list"*), made a hand-written copy of it – *also unknown to Kenner* – and took it to his first of several meetings with Constantine on or about December 6 to show Constantine the tracking of the loaned funds.

See R33 539 - Kaiser "grocery list"

- Please note that there is a December 6, 2009 fax time stamp on the Kaiser copied document.

This is the same as the December 6, 2009 fax time stamp on the Kenner original document – faxed two (2) minutes earlier – also by Kaiser.

See R33 540 - Kenner "grocery list"

Now – Kaiser testified to the EDNY that Kenner gave him the list to show Kaiser where his alleged unpaid CA renovation money went after the December 2007 closing (*despite the bank proof in the \$1.7mm REPAYMENT fraud...Kaiser CA funds – known to the government at all times prior to trial*)– but Kaiser sent Kenner the following text confirming that Kaiser **took** the list – **without Kenner's knowledge** –

"6 days later"...on December 12th, 2009...

Kenner responses in RED

110 64	+163123503 08 John Kaiser*	12/12/2009 4:43:29 PM(UTC+0)	Read	I rewrote that list to show him , <u>is that ok???</u>	
127	+163123503	12/12/2009	Sent	Yes. <u>Remeber it is not complete.</u>	

Prosecutorial Misconduct for Rule 33

69	08 John Kaiser*	9 4:44:22 PM(UTC +0)		<u>Those are just the ones you know about PLUS ~\$500k from Cabo house refy.</u>	
110 67	+163123503 08 John Kaiser*	12/12/200 9 5:04:28 PM(UTC +0)	Read	Dropping Dave , going to hanger (Eufora offices)	

"is that ok???"

"Is that ok???" -- is not written by a person who thinks that it is "**his list**" to show him where \$2mm of "**his money**" went...

With Kaiser's representation that Kenner was not aware of the "**copying**" of Kenner's "**loan list**" to Constantine (*by Kaiser*) until 6 days later – Kaiser miraculously converted Kenner shorthand on the "**grocery list**" –

Ula + LI4 + NV2006
 650k — 1ST K
 1.5m — 2ND K
 500k — NV2006
 2.65m

Kenner shorthand 1

Hawaii
 650,000
 1,500,000
 500,000
 2.65m
 From Med
 where the

Kaiser transposed Hawaii 1

How could Kaiser have transposed the Kenner shorthand of "**Ula + LI4 + NV2006**" to "**Hawaii**" &/or questioned the additional \$2.65mm in payments to Constantine immediately (*if really unknown*)?

- It is not possible unless Kaiser was clearly aware of the \$2.65mm in payments (*via all three consulting agreements – which he signed in 2004, 2005 and 2006*) to Constantine ahead of this event.

In fact – after the Kaiser meeting with Constantine on December 10, 2009 – *also unknown to Kenner* – Constantine sent Kaiser a text to confirm **where** he was going to get at least 10% of the equity owed to Kenner – since Constantine did not want to dilute all of it himself from his personal 49% Eufora equity (*see Eufora 2007 tax returns – which contradict Constantine's 2012 bankruptcy filing*)—

See R33 541 -- Eufora Tax Return 2007

Prosecutorial Misconduct for Rule 33

Constantine texted Kaiser with a 10% solution for the shares of Eufora Constantine owed Kenner from the Kenner to Constantine loans.

See R33 542 -- Constantine confirms 10% of 20% owed for \$2.2mm in ADVANCES

This text from Constantine to Kaiser was two (2) days before Kaiser told Kenner (*above via text*) that Kaiser copied the list of Kenner loans to show Constantine at the meeting...CLEARLY Kenner was not aware of the negotiations between the Kaiser and Constantine to mitigate the issues Kenner was having with Constantine in December 2009.

Due to the Kaiser LIES and government leading questions regarding the “***shopping list***” &/or “***grocery list***” at trial-- the government misled the jury to believe these were funds (\$2mm) that Kenner owed Kaiser that Kenner allegedly sent to Constantine unknown to Kaiser for Kaiser’s benefit.

It was such a twisted LIE that is was virtually impossible to undo at trial by the defense...

After Kaiser had the “***come to Jesus***” meeting with Constantine about the Kenner 20% and the 10% confirmation text (*above*) -- Constantine confirms that he has not been in communication with Kenner on December 12 & 13. Constantine is hoping – ***now that Kaiser has brokered some version of a settlement and truce*** – that Kenner will call him back.

See R33 544 -- Constantine tried to speak with Kenner during the Kaiser mediation to no avail

Constantine (“***monopolized***”) was referring to his attempted negotiations with Jowdy that would have produced tens of millions in commission dollars for Constantine (*alone*) – thus – *no pro bono work...*

Constantine wanted to confirm “***good news***” to Kenner that he has a plan for the first 10% and the following 10% to total 20% as agreed to for the Kenner loans.

Considering the underlying fact that Kenner had agreed to the December 2009 settlement brokered by Kaiser – *and Kaiser believes that Kenner was getting his 20% of Eufora from Constantine & happy again* -- Kaiser went on to raise another \$200,000 from his “***friends & family***”.

- *Otherwise – it would have been unfathomable that Kaiser would have extended another \$200,000 in late December 2009 from Rizzi, Hughes and his mother, Ethel to Constantine and Eufora.*

Ethel Kaiser, Bob Rizzi and Theodore Hughes were the NY EDNY civil Plaintiffs versus Constantine – civil case filed in 2011 & re-filed in 2014 – by NY attorney Stolper.

- *Despite the government's criminal charges for the Privitello investments – neither Privitello &/or the other Kaiser “***friends & family***” sued Kenner civilly in 2010, 2011 &/or 2014 (with Attorney Stolper representing the plaintiffs' group at all times –*

Prosecutorial Misconduct for Rule 33

despite Komatireddy's false claims in her Rebuttal Summation about "a different lawyer" in 2014....

6 First, let's start with Mr. Privitello.
 7 Mr. Kenner argues that he had nothing to do with Counts
 8 Five and Six. He argues that he had nothing to do with
 9 the Privitello investment from Eufora. And his argument
 10 is, well, if Kenner had some to do with Privitello,
 11 Privitello would have sued Kenner in some lawsuit that
 12 happened a year later with a different lawyer and a
 13 different group of investors.

Now – on December 19 – as a result of the Kaiser December meetings with Constantine -- Constantine asked Kenner if Kenner had a copy of all the URGENT REQUESTS from Constantine and the bank transfers that Constantine &/or his 3rd party vendors received on Constantine's behalf – since Kenner (*above*) told Kaiser via text that there were more transfers that Kaiser was not aware of.

127 69	+163123503 08 John Kaiser*	12/12/200 9 4:44:22 PM(UTC +0)	Sent	<u>Yes. Remeber it is not complete.</u> <u>Those are just the ones you know</u> <u>about PLUS ~\$500k from Cabo</u> <u>house refy.</u>	
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See R33 545 -- Kenner December 19, 2009 email with Constantine transfers and bank info

Kaiser had a copy of this email, which he forwarded to Matt Smith (***during the Kenner investigation***) on July 26, 2014 – *in EDNY evidence – despite Kaiser's lies below.*

At EDNY -- Kaiser went on to testify –

9 Q To this day, how many shares do you have -- or what
 10 document do you have showing that you have anything in Eufora?
 11 A I have nothing for that.
 12 Q And the money that supposedly went through Mr. Kenner
 13 into Eufora for you, do you have an accounting of that money?
 14 Did you get that money back?
 15 A No.

❖ ***Kaiser was not entitled to any of the shares – so Kaiser would not have any accounting for them...but HE still had a copy of the wires and forwarded them to FBI Agent Matt Smith.***

Prosecutorial Misconduct for Rule 33

- ❖ ***This was more deceptive testimony by Kaiser led by Michiewicz to cloud the jury from the real truths...***

Under Cross-examination Kaiser explained that he never had a list of wires (***even though the “grocery list” funds were not his***) other than his alleged “***grocery list***” from Kenner -- ***but Kaiser forwarded the December 19, 2009 list (originally from Kenner to Constantine) on to Agent Matt Smith on July 26, 2014.***

Despite Kaiser's proof (*notwithstanding the loaned funds REALLY belonged to Kenner*) – Kaiser LIED to the EDNY.

See R33 550 -- Kaiser lies about Kenner's loans to Constantine

Now – even though Kaiser was fully repaid from the CA house deal --Kaiser claimed in two (2) separate and untruthful affidavits (*in AZ and NY-EDNY civil case*) that he was told by Kenner that he owned \$275,000 of wire transfers and a grand total of \$2.2mm in transfers to Constantine.

See R33 551 -- Kaiser continues lies about “Grocery List loans” to Constantine

If all of Kaiser's claims were truthful – the Kaiser claims would put Kaiser's repayment total well over \$5mm for the approximate \$1.8mm that he was due at the end of the CA project.

This is not counting the \$100,000,000 – YES \$100 MILLION – which Kaiser, Harvey and Jowdy attempted to steal from Kenner in 2014 – thru the forged and fabricated Baja Ventures 2006 transfer guarantees – memorialized in their letter of April 21, 2014.

In the Constantine AZ bankruptcy filing – Kenner filed an adverse proceeding for himself and 10 other clients in or about March 21, 2013.

- Please note that Kenner claimed the entire \$2mm+ in loans that Constantine failed to notice in the bankruptcy filing – BUT – Kaiser made no claim at all against Constantine &/or Eufora.

See R33 552 -- CBKR-00000001 - Kenner adverse proceeding

Kenner outlined a few of the URGENT text requests from Constantine (*which made up the “grocery list” amounts that Kenner loaned to Constantine over the years*) in kenenrs adverse proceeding.

See R33 553 -- \$1.5mm+ grocery list loans to Constantine from Kenner via desperate text requests

For a longer list (*although also not 100% inclusive*) for the PANICKED Constantine financial requests to Kenner to save him... ***See R33 C -- Constantine PANIC texts***

In August 2010 (long after Kenner STOPPED talking to Constantine)– Constantine attempted to settle with the Eufora shareholders – including Kenner – by offering a new Eufora operating agreement for all to sign.

Prosecutorial Misconduct for Rule 33

Kenner's Triple Black Diamond Trust (listed backwards below) was to hold 12% (instead of the agreed 20%). This was never signed by the Eufora members &/or Kenner ***at the direction of Attorney Stolper***...not the Constantine or government alleged "Puppet Master" ...

This was further proof of the "***grocery list***" funds from Kenner to Constantine and Constantine's desire to complete the deal – since Kenner was adverse to Constantine and a part of the Plaintiffs' group thru Stolper.

See R33 439 -- EUFORA LLC_DE_ Operating Agreement dated as of 08-05-2010

- Please note that "***Triple Black Diamond***" is a skiing term related to Kenner's #1 past time of extreme skiing.

Under the government's prosecution theory – Counts 2, 3 & 4 occurred because Gaarn was NOT selling stock that he owned but rather was acting as a "*straw man*" – although the term was not used, only implied – to facilitate the sale of stock the government proffered -- without any evidence -- belonged to Kenner...

Kaiser also testified at EDNY that he was told by Kenner that Gaarn owed Kenner money and would repay some of the CA funds to Kaiser thru transfers from Gaarn (*mistakenly*)...

Kaiser was fully repaid by Kenner from the CA renovation project by 2008 – so this testimony corroborated by Gaarn and Kaiser was also fabricated for the EDNY trial to prejudice Kenner.

Kenner would have clearly known if Kaiser was FULLY repaid or not...

- Notwithstanding that fact -- Kaiser had been fully repaid and all of the other circumstantial (*but specifically supporting*) evidence confirms Kaiser LIED to the EDNY with the government-led "***grocery list***" claims.
- Ultimately – through these false proffers – Michiewicz asserted to the court that the funds Gaarn eventually wired to Kaiser in February 2009 were a direct result of Kaiser's UNPAID CA beach house investment with Kenner – and the government's claims for the reason of the substantive counts 2, 3 & 4 against Kenner. Since the underlying premise from the government and Kaiser is FALSE – *then the Counts cannot be true*...

On the same date of the second wire (*loan to Kaiser from Gaarn*) – Gaarn also transferred funds to Kenner for Gaarn's personal loan repayment (*from the \$150,000 PLUS of 2007-08 loans to Gaarn*) –

- So -- it is illogical that Kenner would have instructed Gaarn to send funds to Kaiser if they were not a loan between the parties...again – two (2) times within two (2) weeks – by mistake...and also send funds to Kenner separately on the same dates.

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Since this is now clearly untruthful and made-up – how can Counts 2, 3 and 4 be levied by the government – not discounting that this was the only jurisdiction tie Kenner had to the EDNY?

Prosecutorial Misconduct for Rule 33

Kaiser PERJURY – re -- Hawai'i loans...and confrontation meeting with Kenner...

- ***The ALLEGED “confrontation” meeting between Kaiser, Manfredi and Kenner (in 2006) NEVER HAPPENED (per Manfredi’s own 2009 testimony and October 10, 2010 FBI proffer) –***
 - ***It was more prepared and suborned perjury between Kaiser, Galioto and the government...***

Kaiser has perpetrated more frauds on the EDNY court in the Kenner & Constantine trial than any other individual (*with Galioto’s help*) – notwithstanding his contemporaneous FRAUDS committed (*also with Galioto’s help*) in the 2015 civil trial in AZ – which he and Berard lost and were caught perpetrating multiple LIES and FRAUDS on the court – ***specifically about their unsuccessful FORGERY defense claims (just like Jowdy in AZ-2008 and NV-2010) and the 2015 EDNY prosecution.***

Kaiser’s testimony in the 2009 Nolan v Kenner arbitration CLEARLY outlines not only Kaiser’s knowledge of the loans to Jowdy, but his 100% desire to participate in them by raising money in August 2005 thru his ***friends & family***.

- ❖ It should be noted that at the EDNY trial, the government claimed that the two (2) forged Kaiser signatures could not have happened due to Kaiser’s mourning in July 2005, as a result of he and his wife’s miscarriage.
 - Please note that Kaiser's best friend, Manfredi, confirmed that Kaiser's miscarriage was over a year earlier in his 2010 FBI proffer – contradicting the government’s theory on why Kaiser could not have signed a document with Kenner.

See R33 554 -- Manfredi confirms Kaiser's miscarriage was not at the time of the July 2005 Constantine consulting agreement

- ❖ Ironically, this is the exact same time that Kaiser apparently could not sign the Constantine consulting agreements – Kaiser proposed to many ***“friends and family”***, including Vincent Tesoriero’s parents and his own Mom with \$700,000, Ethel (*who also just lost a grand child in the same tragedy*) to invest \$1mm in total for the loan/investment to the Hawai'i LLCs – ***thru Ka’u Holding Company.***

Please note that pre-trial – the government also claimed that two other documents were forged – the 2004 Hawai'i loan agreement (***although it was authenticated by Jowdy's own Nevada attorneys in December 2010 as part of his trial defense***) and Kaiser's México testimonials in support of the criminal cases versus Jowdy (***which audio recordings in the government's possession between Berard, Kaiser and Gaudet confirm by Berard that Kaiser signed BLANK DOCUMENTS at the district attorneys office for his testimonial***)...

- After Kaiser and Berard became employed by Jowdy in México – Kaiser gave testimony in front of the México District Court (*in Baja California Sur, México*) that his signatures were FORGED (*despite Berard's confession to the contrary to Gaudet*

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on the FBI recorded calls) – further perpetrating frauds in 2012 on behalf of his new employer, Jowdy – and against his Hawai'i members under Na'alehu Ventures 2006 – which Kaiser was the Managing Member – while Kenner was attempting to re-claim the funds from the ongoing Jowdy frauds.

These are more timelines and logic that do not support the various government theories at all...and were ignored by Galimoto and the government.

- ❖ The ***Ka'u Holding Company*** bank account was established (*new*) for the Kaiser transaction.
 - Please note that Ethel Kaiser testified that she only invested \$390,000 (*fully repaid by her son with 12% interest*) but the Kau Holding Company bank statements from August 2005 show a \$700,000 contribution from Ethel, thus Kaiser stole over \$300,000 from his mom and unknown to her, as follows –

See R33 555 -- Kau HOLDINGS AUGUST 2005 BANK STATEMENT

At the 2009 arbitration, Kaiser testified to the following –

See R33 556 -- 2009 Kaiser testimony in Nolan arbitration – confirming all loans to Jowdy and friends & family investments (specifically to participate in the Jowdy loans)

Kaiser's knowledge of the loans and further confirmation of his 2009 testimony was given during his October 19th, 2010 (*in person*) interview at his Long Island NY home with FBI Agent Galimoto and SDNY investigator, Scott Romanowski.

See R33 557 -- Kaiser confirms to FBI in October 2010 of Jowdy loan knowledge from face-to-face meetings

- ***Why would Kaiser tell the FBI that he was looking for the funds from Jowdy and not Kenner in October 2010 – if Kenner really stole them as Kaiser's revisionary history now claims to protect his boss and co-conspirator in México – Ken Jowdy?***

As late as July 2011 – after Kaiser had abandoned the entire Hawai'i group recovery efforts versus Jowdy (*after he and Berard had met with Jowdy in México*). Kaiser refused to fulfill his fiduciary responsibility to Kenner and the other Hawai'i investors. Kenner sent Kaiser the following message confirming the previous Kaiser efforts and involvement in pursuing Jowdy for the “***\$5.5m loan***” from Hawai'i – *still unpaid...*

174 71	+1631235 0308 John Kaiser*	7/25/2011 12:54:43 AM(UTC+0)	Sen t	I'm sure you're exhausted every day from work. So, please send the 5k Monday (so I can make my loan mod payment in 5 days or I'm out), <i>I'll keep working with Stolper on the NY case even though I'm not a beneficiary, I won't mention Mexico to you (since other than</i>
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				<i>the Hawaii 5.5mm loan, you're not involved</i>), text me why carol is not fired yet (so I can do what I need to do), & I'll handle Sotheby's if you cannot. No worries here. We will catch up some day...pk	
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Kaiser never responded.

One year later – Kaiser's brother, Richard, sent Kenner a message about the FBI calling him and Kenner replied with the **known fact** that **John Kaiser had robbed his Mom (Ethel), friends and friends** and was trying to blame it on Kenner as follows –

13 08 1	+1631398 4887 Rich Kaiser*	10/21/2 012 4:51:10 PM(UT C+0)	Rea d	Call you tomorrow from another line. F.b.I called me am not using this phone	
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Kenner responded --

10 95 6	+1631398 4887 Rich Kaiser*	10/21/2 012 4:57:57 PM(UT C+0)	Sen t	I'll be here. <i>They probably want to know why your brother stole all the money from your mom and took loans from his friends that he cannot account for now. It's too bad that your brother decided to stir up all this shit with Berard.</i> It was completely unnecessary, but he totally got tricked by Jowdy. It's embarrassing...	
10 95 8	+1631398 4887 Rich Kaiser*	10/21/2 012 5:02:09 PM(UT C+0)	Sen t	<i>All this shit got stirred up because your brother decided to be on Jowdy's team...</i>	

Kaiser was looking for “**cover**” from all of his personal frauds and needed to blame it on someone.

All of Kaiser’s 2009 testimony– **confirming all of the knowledge of the loans to Jowdy** – was contradicted by **PERJURY** at the EDNY with Kaiser fabricating a story about a 2006 confrontation with Kenner – led by Manfredi (*who did not corroborate this in his own 2009 deposition – below*)...

See R33 558 -- Kaiser LIES about a 2006 Hawai'i confrontation between Kenner, Kaiser and Manfredi re – Kaiser's \$1mm being sent to México without his knowledge

Kaiser clearly forgot that Manfredi – who was his alleged partner in the 2006 “confrontation” meeting – **had given a deposition in 2009** where he **confirmed** he had **no**

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knowledge of the Hawai'i bank statements &/or Kaiser's investments/loans – ***AND CERTAINLY NOT*** the alleged THEFTS by Kenner (*as Kaiser described in the EDNY*).

See R33 559 -- Chris Manfredi deposition in Hawai'i – March 31, 2009

If Manfredi NEVER saw any accounting for the Hawai'i partners (or any of the LLCs) – How could Manfredi have confronted Kenner about where any of the money came from or went to?

HE COULD NOT!

This was MORE Kaiser PERJURY...and clearly planned between Kaiser and the government for the EDNY trial...

Manfredi also confirmed – *as an onsite manager for the Hawai'i project in 2009* – that the Lehman Brothers bankruptcy has put a stranglehold on the project – which ultimately led to its FORECLOSURE – ***not anything to do with Kenner***

See R33 560 -- Manfredi confirms Lehman Brothers bankruptcy caused the Hawai'i losses (not Kenner)

Even though Kaiser and Manfredi met in NY 6-8 weeks before the 2009 deposition – Manfredi NEVER disclosed that Kenner wrongfully diverted money to México and he and Kaiser had to address the alleged THEFTS in 2006 during the deposition.

The deposition was for a party who was adverse to Kenner. Kenner was suing his former employee, Myrick, ***who was being sued by Kenner civilly for alleged wrongdoings*** (while she was working alongside Jowdy and his attorney, Tom Harvey).

- ***This would have been the perfect platform or forum for Manfredi to air his dirty laundry (for he and Kaiser) -- but he did not...BECAUSE there was none...***

Kaiser fabricated his testimony during EDNY contradicting Manfredi's 2009 deposition admissions.

See R33 561 -- Kaiser lies about 2006 confrontation with Kenner, Manfredi and himself

See R33 2006 -- 3500-CM-2-r

- ***Manfredi confirmed to the FBI in October 2010 that he had no knowledge if Kaiser increased his \$1,000 from 2003 – so how could the confrontation about the \$1mm from Kaiser have occurred in 2006? NOT POSSIBLE and more SUBORNED PERJURY!***

Kaiser claimed two (2) times to the EDNY that the confrontation meeting was the first Kaiser learned about the Jowdy loans and only because of Manfredi – in a meeting that never took place – since Manfredi (in 2009) was unaware of the Kaiser investment/loan specifics and never saw the Hawai'i bank statements...

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- Please note that Kaiser told the 2009 arbitration that he never saw Kenner do anything wrong (***like a \$1mm fraud!?!?***) – That would clearly have qualified as something wrong – notwithstanding the 2015 testimony of alleged millions Kenner still owed Kaiser from the 2007 CA real estate sale (*15 months before the 2009 arbitration*)...
- ***Kaiser's EDNY lies make no sense and could not have taken place based on the timing of the REAL underlying events and others testimony and actions...***

Kaiser from the 2009 arbitration testimony --

7	Q. Even now, sitting here in May of 2009, is there
8	anything that you've uncovered, as someone that obviously
9	knows how to investigate, that Mr. Kenner has done anything
10	inappropriate throughout these transactions?
11	A. No.
12	Q. Not one complaint?
13	A. None.

Despite Kaiser's government supporting and self-serving testimony in 2015 – Kaiser told the FBI in October 2010 that he met with Jowdy on a number of occasions to discuss the loans from Hawai'i to Jowdy/México (*below*) – also DENIED (*thru suborned PERJURY*) at the EDNY trial.

The first meeting – according to Kaiser – took place in 2003 – one year before the loans actually began.

How could Kaiser have found out from some 2006 fictitious meeting with Manfredi?

- Kaiser, Galimoto and the government created the “confrontation story” to disparage Kenner.

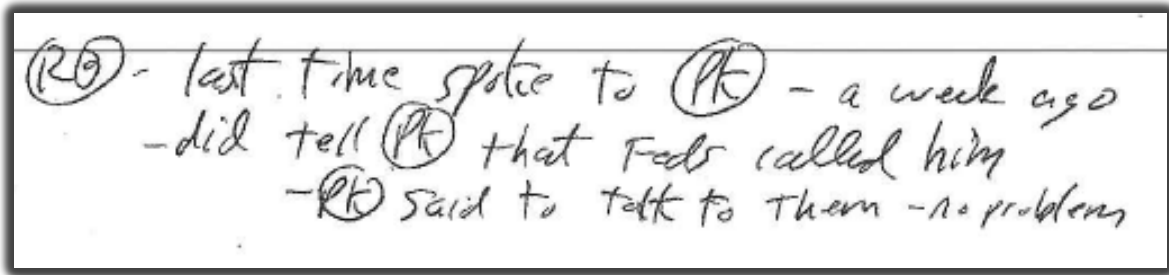
See R33 557 -- Kaiser confirms to FBI in October 2010 of Jowdy loan knowledge from face-to-face meetings

Kaiser falsely claimed at the EDNY trial that Kenner told him he was “***crazy***” for talking to the FBI...but it seemed that Kaiser, prior to his employment with Jowdy in Cabo at Diamante, was full of the “***truths***” about the loans to Jowdy in October 2010 – *which Jowdy had already testified to* – ***AND Jowdy CONFIRMED HIMSELF*** -- in the January 2010 Jowdy deposition in CA.

At the same time – former Jowdy employee, Robert Burdick (“***RB***”) proffered with the FBI (*Galimoto*) and told Burdick to – “***talk to them (FBI) – no problem***”.

From the Burdick 3500 materials –

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To Burdick -- "PK (Kenner) said to talk to them -- no problem"

Kaiser denied all of this -- in re-DIRECT thus Michiewicz again SUBORNED PERJURY -- at trial (i.e. -- *Appellate issue*) despite the fact the story of the loans and the "**friends and family**" he took the funds from was corroborated (*above*) in his own 2009 arbitration testimony.

In fact -- Kaiser's partner in crime (*and Jowdy-México employee*) -- Bryan Berard -- presented the same ever-changing testimony to the EDNY -- **contradicting all previous testimony and text message correspondences with Kenner**...without a comment from the knowing prosecution table -- including Wayne and Galioto.

Berard testified in EDNY that he was **not aware** of the loans to Jowdy and **would never have approved them**...BUT in 2009 in the Nolan v Kenner arbitration, Berard testified to his "**knowledge of the LOCs**" and the "**Jowdy loans**" -- as follows --

Berard was aware of --

- ❖ The set up of his LOC (*with Kenner's help*) and knowledge of his pledged account,
- ❖ The Hawai'i LLCs obligation to make the monthly payments on the LOC (*repeated two times*), and
- ❖ The use of LOC funds (**and Hawai'i capital**) to make loans to Jowdy in Mexico at a specific interest rate.

See R33 562 -- 2009 Berard testimony -- confirming knowledge of loans to Jowdy from Hawai'i

Both Kaiser and Berard's **selective amnesia** occurred after Jowdy -- at Diamanté in México - - employed them.

In 2011 -- also coinciding with Attorney Michael Stolper's "*change of heart*" to pursue Lehman Brothers, Masood Bhatti, Alan Worden and Trimont Real Estate Advisors (*accountants*) for gross mismanagement of the Hawai'i project and documented embezzlement -- since it was discovered post Lehman Brothers bankruptcy that Worden had earned \$2.5mm during the 2 years (2006-2008), Worden's company (*Scout Capital*) had drained \$11mm from the budget in two years (*which includes Worden's \$2.5mm developer fee*), and incredibly, not one single shovel of dirt had been moved in Hawai'i -- all under Kaiser's Managing Member responsibilities at Na'alehu Ventures 2006.

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- ***Please note that after the Lehman Brothers bankruptcy – Bhatti (Lehman Brothers' lender) became employed with his long-term friend and Hawai'i co-conspirator Worden at Scout Capital in NY in 2008-09.***
- ***In 2011 -- Kaiser and Berard "shut down" the Stolper Hawai'i litigation efforts versus Jowdy's friends, Bhatti, Worden, and Mike Devlin (at Trimont Real Estate Advisors – the audit firm for the Cabo, Hawai'i, Texas and Tennessee projects – all financed by Bhatti at Lehman Brothers for Jowdy and Worden) – In EXCHANGE FOR high-paying jobs in México – when both of them were 100% BROKE from extravagant lifestyle expenses and other financial pressures from UNPAID loans from "friends & family"...(previously documented)***

Bhatti from Lehman Brothers approved Worden's thefts, which occurred at the same time that Worden (*per email*) claimed Lehman Brothers would not approve the payments of the \$4mm in MILESTONES that were agreed upon in the 2006 JV Agreement between the parties.

Kaiser did ***NOTHING*** to resolve the ***\$4mm MILESTONES*** from the time he became the manager of Na'alehu Ventures 2006 on December 31st, 2007 thru the time he received the job from Jowdy & Attorney Tom Harvey in in México – not even provide accounting &/or K1s for the Hawai'i LLCs (*for the last 7 years*).

- Please note that Kaiser did claim to the EDNY that the one email (*asking about the MILESTONES and lack of communication*) that he wrote to Worden – was fraudulently written by Kenner on his computer -- *unknown to Kaiser* – and sent. Despite this contemptible and defamatory testimony – Kaiser responded to Worden's "***admonishment***" by continuing on the same email chain a few weeks later when Kenner asked Kaiser to request the Hawai'i project K1s. It was unfathomable – especially considering ***the government presented a partial email to Kaiser to solicit the pre-planned character assassination – and avoid proper disclosure of the complete evidence to the court.***

The complete email chain (*later discovered by Kenner post-trial*) confirms that Kaiser continued without comment to Worden.

See R33 563 -- COMPLETE Kaiser & Worden email re- Milestones

- ***Please note that there is no chance that Kaiser would have continued with the same email chain IF he did not start it himself..***

Prosecutorial Misconduct for Rule 33**Kaiser completely transparent knowledge regarding the 2004 Hawai'i loan agreement with Jowdy –**

Please note that Kaiser confirmed Kenner sent the loan agreement to his NY residence. The document was signed in 2004 and sent to Kaiser – at his request – *for safekeeping* –

13 Q Did you ever have a conversation with Robert Gaudet
14 concerning the fact that he signed as a witness to the
15 revolving line of credit document dated December 12, 2004
16 involving Kenner Jowdy and the Hawaii Project?
17 A Yes.
18 Q Where did that conversation take place?
19 A I don't recall.
20 Q Did you ever see, sir, a document entitled Revolving
21 Line of Credit Loans December 7, 2004 which purports to be
22 or is a written loan agreement between Kenner Jowdy and
23 the Hawaii Project?
24 A Yes; Mr. Kenner sent it to my residence.

This confirms that before Kaiser's 1mm loan/investment in the Hawai'i deal in August 2005 – Kaiser had the loan agreement in his possession.

Kaiser confirmed there was an agreement to the FBI in his October 19, 2010 proffer as follows –

brought up borrowings & from Hawaii project
 (KJ) → ASMBM
 borrowed millions from Hawaii project
 - 1st was going to be \$100sk = not millions
 (JC) - not happy \$1 amt started to grow to millions of \$ to Mexico
 discussed → Brian Bernard
 (PK)
 = was Agreement to borrow \$ from Hawaii-

Not only did Kaiser confirm there was an agreement – **but also** – he told the FBI he discussed the Jowdy meeting **with Berard and Kenner** (above).

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In the context of his \$1mm loan/investment in August 2005 &/or his alleged confrontation meeting with Kenner and Manfredi (*which never occurred*) – Kaiser **NEVER** disclosed either to the FBI in his first proffer when the subject came up.

See R33 564 -- Kaiser NEVER disclosed \$1.1mm issue with the FBI

- Please note that this would have been the perfect time for Kaiser to explain that the \$1mm was diverted by Kenner &/or he and Manfredi had confronted Kenner about the alleged diversion in 2006...***but he did not...***

In fact – it was one year earlier that Kaiser told the 2009 AZ Arbitration panel that he was aware of everything and in fact raised the \$1mm in August 2005 to participate in the 15% loan to Jowdy.

See R33 565 -- 2009 Kaiser testimony re – raising funds for Jowdy loan from friends & family

Now – in the July 2, 2009 deposition of Robert Gaudet (***the witness on the 2004 loan agreement***) – Gaudet confirmed his conversations with Kaiser about the agreement.

See R33 566 -- Gaudet July 2, 2009 -- AZ deposition

Although Jowdy's attorney begins the deposition with the following criminal threat (*notwithstanding all of the threats Gaudet described that Harvey had put forth prior to the deposition*) – Gaudet confirms the Kaiser communication and his witness signature on the 2004 Hawai'i loan agreement with Jowdy.

17 Q. If you provide knowingly false testimony during
18 this deposition, you can be subject to sanctions by the
19 Court and also possibly federal criminal charges for
20 perjury.
21 Do you understand that?

Kenner personally after dozens of depositions has NEVER been told that he could face – ***“...also possibly federal criminal charges for perjury” ...***

See R33 566a -- Gaudet July 2, 2009 -- AZ deposition

- Gaudet gave testimony that confirmed Kaiser told him that he was the person who requested Jowdy sign the loan agreement.

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Now – ***UNSOLICITED*** & despite the confirmed conversation (*above*) with Gaudet that would have occurred prior to the AZ lawsuit versus Jowdy in 2009 – Kaiser ignored the actual questions at hand and testified to the EDNY court on at least two (2) occasions that the Hawai'i loan agreement (*with Gaudet's confirmed signature*) was a forgery to further taint Kenner.

See R33 567 -- Kaiser claims AZ forgery -- unsolicited

The EDNY court clearly read the AZ finding about discovery issues & dismissal – ***despite Kenner's compliance (in December 2009) with the original order to fulfill the 2nd day of deposition which concluded before the dismissal*** – which Kenner did once represented by new counsel – Tom Baker (*on behalf of Little Isle 4, Ula Makika*).

According to the AZ judge's order – Kenner was missing the ***written explanation*** to the AZ Court about the delay. Attorney Baker did NOT submit a written response to the judge -- since he and Kenner had already appeared for the 2nd day of the Kenner deposition.

Kenner's México case (*for he and the \$25mm of México investors*) had to be witnessed on the same day (*June 15, 2009*) that the Defendant's counsel wanted Kenner in AZ for Day 2 of the deposition. Kenner and his joint attorneys decided it was more CRITICAL for everyone involved in the multiple cases versus Jowdy for Kenner to be present in México that day and reschedule the AZ deposition. ***That is exactly what occurred.***

The EDNY court ruled that the government was misrepresenting the facts of the AZ case dismissal.

See R33 568 -- EDNY court explanation of the AZ case dismissal

Unfortunately the jury never heard the Court's explanation...especially considering Michiewicz – despite the court's order at sidebar – went on to allege the forgery issue one more time about the AZ case – *further tainting the jury*.

See R33 569 -- Michiewicz went on to allege the forgery issue one more time about the AZ case

Then – to close the deal on the AZ pre-planned forgery allegations by Kaiser – during the government summation – the government proffered the forgery as fact.

See R33 570 -- Government summation fraudulently proffering Hawai'i loan document forgery

Please note that Kaiser actually signed the 2004 Little Isle 4 operating agreement, which specifically outlines the use of funds for the Hawai'i partners thru Little Isle 4 to ***LOAN MONEY***.

See R33 571 -- 2004 Little Isle 4 By-Laws

In 2006 – at the time of the alleged confrontation -- Kenner owned a home on the Big Island of Hawai'i that Manfredi lived in full time (***free on Kenner***) and where Kaiser stayed 100% of the time in one of the guest bedrooms (***free on Kenner***) when in Hawaii.

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The actual office for the Hawai'i partners was also in the Kenner home on Mamalahoa Highway (***also free on Kenner***) in Na'alehu, Hawai'i – SO – there would be ***NO REASON*** for Kenner to meet with Manfredi and Kaiser in a hotel at any point in time for an ***update meeting – specifically because 100% of the Hawai'i materials were in the house/office...THUS -- just another meaningless fabrication.*** This purported meeting NEVER happened.

- ***If the FAKE meeting had occurred with the false allegations – which it did not – Kenner would have immediately KICKED Manfredi & Kaiser out of Kenner's house, taken Kenner's trucks away from both of them, and fired Manfredi & Kaiser from the project...***

In fact – in the Nolan 2009 arbitration – Kaiser also testified that he had ***never*** seen Kenner do anything inappropriate or stealing his (*Kaiser's*) money – again contradicting his EDNY testimony 6 years later about a fictitious event that did not occur nine (9) years before trial and had ZERO supporting evidence – only specific and foundational contradictions.

See R33 572 -- 2009 – Kaiser testimony that Kenner is CLEAN and transparent businessman

Please note that Kaiser's supportive testimony would have occurred ***AFTER*** –

- ***The ALLEGED*** 2005 Misappropriation of Kaiser's \$1mm loan/investment in Hawai'i,
- ***The ALLEGED*** 2006 confrontation meeting between Manfredi, Kaiser and Kenner,
- ***The ALLEGED*** 2007-08 non-repayment by Kenner of the ~\$1.9mm due to Kaiser from the CA Beach House proceeds, and
- ***The ALLEGED*** email Kenner sent to Hawai'i partner, Alan Worden, dated February 1, 2009 – that Kaiser would have known about (*if really done without his knowledge*) BECAUSE Kaiser used the original email to respond to Worden on February 25, 2009 (*before the Nolan May 2009 arbitration*) without claiming he had nothing to do with the original harsh email (*notwithstanding Worden's scolding of Kaiser in his February 4, 2009 response*)...

...BUT...

Kaiser told the 2009 arbitration -- "NO" -- NOT ONE COMPLAINT!

BECAUSE...

NONE OF THOSE THINGS REALLY HAPPENED...

Now – the government allowed Kaiser to continue on a most incredulous line of answers – knowing he was manufacturing testimony and attempting to slander Kenner and Constantine.

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24 BY MR. LARUSSO:
 25 Q. Mr. Kaiser, were you involved in lawsuits against
 Mary Ann Steiger, CSR
 Official Court Reporter

1227

1 Mr. Jowdy?
 2 A. No.
 3 Q. Were you aware of lawsuits against Mr. Jowdy?
 4 MR. MISKIEWICZ: Objection.
 5 THE COURT: This is all calling for hearsay. He
 6 wasn't involved. If he was aware of it, it would only be
 7 through hearsay.
 8 MR. LARUSSO: Let me see if I can lay the
 9 background for it, if I may.

By the time that Kaiser was partaking or “*involved*” in the litigation efforts with Kenner and Kenner’s investors versus Jowdy in CA – *Kaiser joined the group adverse to Jowdy at the January 2010 2-day depositions of Jowdy and at the February 2010 court ordered mediation* – with his only connection to the situation as the Managing Member of Na’alehu Ventures 2006 (*since December 2007*).

SHOCKINGLY -- Kaiser attempted to convey to the EDNY that he was a neutral party at the mediation.

This was beyond outrageous – since plaintiff attorney Ronald Richards invited Kaiser to attend the meeting (*as the Na’alehu Ventures 2006 Managing Member – and in charge of the UNPAID loans by Jowdy to Hawai’i – nothing else*).

What other purpose would Kaiser’s presence have been in the mediation – less than one month after Kaiser specifically flew to California to attend the 2-day Jowdy confessional depositions in January 2010?

How could anyone reasonably believe that Ronald Richards, Kenner, Constantine &/or the 19 plaintiffs would have wanted or allowed Kaiser to be present at the mediation to object to their collectively adverse position to Jowdy?

IT WAS IRRATIONAL TESTIMONY...

...And ENDORSED PERJURY by the government...

Kaiser's EDNY testimony was made-up and contrived to suggest to the court and jury that he simply arrived at this private mediation in CA (*which he flew from NYC to attend*) to tell

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the judge that he was not in support of Ronald Richards's plaintiffs, Kenner &/or Constantine?

MIND-BOGGLING...

This would ***ALSO*** have occurred eight (8) months after Kaiser's clear and convincing testimony in the Nolan arbitration (*March 2009*).

See R33 573 -- 2009 Kaiser testimony in support of Kenner and aware of the investor problems with Jowdy

Under further Cross-examination by LaRusso – Kaiser confirms that he was present for the Jowdy mediation and had first-hand knowledge --

10 BY MR. LARUSSO:
11 Q. Did you participate in any meetings regarding
12 lawsuits against Mr. Jowdy?
13 A. I was at a mediation once in California.
14 Q. And that mediation was in California?
15 A. I believe so, yes.
16 Q. Who was present at that mediation?
17 A. A bunch of the hockey players, attorney Ron Richards,
18 Mr. Kenner, Mr. Constantine.
19 Q. And yourself?
20 A. Yes, I was. I said I was there, yes.

BUT – Kaiser reprehensibly denies being there on the side of the hockey players – *as if this mediation was a town-forum* –

7 Q. So there's two sides to this mediation. You are on
8 the side of the hockey players, the same side
9 Mr. Constantine was on; is that right?
10 A. No.
11 I told the judge I'm not -- I have nothing to do
12 with Mr. Constantine.

- ***Please note that this statement – if true – would have occurred less than six (6) weeks after the conclusion of the Kaiser "friends & family" investment in Constantine's Eufora company in December 2009.***

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- ***Again – it is unimaginable and ridiculous that Kaiser was an adverse party to Ronald Richards' plaintiffs &/or Constantine at this time and certainly not at a private mediation in CA.***

Then – to complete the PERJURY to the court (*on this specific topic*) – Kaiser after being present in January 2010 for the Jowdy confessions of stealing the loans from Hawai'i, Kenner, Stumpel, Murray, Norstrom, Gaudet and others told the EDNY court he did not believe Jowdy stole the investor's money.

18 BY MR. LARUSSO:
 19 Q. Mr. Kaiser, were you there because you felt that
 20 Mr. Kaiser had stolen money?
 21 A. I didn't steal money.
 22 Q. I'm sorry.
 23 Mr. Jowdy had stolen money?
 24 A. No.

- ***On two occasions in the EDNY – Kaiser actually was caught stealing money from his mom (in August 2005) and once sharing the \$147,000 with Berard (\$95,000) – so he lied about that as well.***

AGAIN – Kaiser was present one month earlier for the 2-day Jowdy confessional where Jowdy himself confirmed on at least seven (7) separate occasions during the depositions that he borrowed (*or stole*) investor's money from Hawai'i and other personal loans and had no intention &/or plan to pay them back.

See R33 574 -- Jowdy loan confessions in Kaiser's presence – January 2010

What was Kaiser listening to &/or what did Kaiser read in the depositions -- which he received after the transcripts were complete like all of the Ronald Richards' plaintiffs – that confused him about the myriad of Jowdy confessions?

Kaiser requested the depositions one month after the CA appearance for a 2nd time from Kenner as follows – (***Kenner responses in RED***) --

1208 9	+16312350308 John Kaiser*	2/15/2010 10:09:07 PM(UTC+0)	Read	<i>Pls fwd me the depo. J</i>	
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13930	+16312350308 John Kaiser*	2/15/2010 10:11:48 PM(UTC+0)	Sent	Ok	
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12090	+16312350308	2/15/2010 10:13:46	Read	Tks	
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	John Kaiser*	PM(UTC+0)			
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- Please note that the entire 2-day deposition was posted online by a CA blog site in mid-January 2010 – thus it was available since mid January for anyone to view the Jowdy confessional...

Jowdy admitted to stealing the money in front of Kaiser. Kaiser actually corresponded with Kenner in frustration during the newfound admissions of “**loans**” (*in lieu of the 2008-09 “investments” LIES*)...

See R33 574a -- Jowdy admitted to stealing the money in front of Kaiser

...And finally – despite the fact that Kaiser was present five (5) years earlier at the Jowdy January 2010 confessional – Kaiser claimed that the only reason he believed Jowdy stole the money (which was still not repaid in 2015 at the time of the EDNY trial – or still today in 2016) – was because of what Kenner told him.

Kaiser misleadingly claimed –

4 Q. At any point in time did you ever accuse Mr. Jowdy of
5 being a thief?
6 MR. MISKIEWICZ: Objection.
7 THE COURT: Overruled. You can answer that.
8 A. Yes, after Mr. Kenner had told me some things about
9 Mr. Jowdy.
10 Q. That was before the mediation?
11 A. Yes. Just before, yeah.
12 Q. So when you're told this information, you believed
13 that Mr. Jowdy had stolen money?
14 A. No.

Apparently – México employment has is loyalties...

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Michael Peca – “no knowledge of Hawai'i loans to Jowdy”

- These **PERJURIOUS** claims by Michael Peca in the EDNY were made in front of a knowing prosecution and FBI -- despite the fact that Michael Peca –
 - Signed a May 2009 affidavit for Kenner in the Nolan arbitration confirming his knowledge of the loans to Jowdy,
 - Signed the September 2009 disclosure letter for his attorney, Tom Baker, confirming the “***gist of the lawsuit versus Jowdy was the \$5mm in unpaid loans form Hawai'i***” in the opening paragraph,
 - Signed the 2009 GSF authorization letter (*and email from his wife – thus double acknowledgement*) confirming the litigation efforts by Ronald Richards in CA versus Jowdy,
 - Signed the Ronald Richards litigation authorization in CA to sue Jowdy for the thefts, unpaid loans and ongoing embezzlement in México in 2009,
 - Received the January 2010 Jowdy 2-day depositions ***where Jowdy admitted to all of the loans from Hawai'i*** and the other individuals (*refuting Jowdy's year-long, 2008-09 “no loans” defense claims – and shocking the entire 19-man plaintiff group plus Ronald Richards, Kenner, Kaiser, deVries, Woolley and Constantine*),
 - Participated in the January 2010 mediation with Jowdy in Los Angeles CA where an 8-hour meeting day (*with 10 other Jowdy plaintiffs and victims – including Jowdy, Harvey, Kenner and Constantine*) met with their attorney, Ronald Richards, to discuss the possible outcomes of the litigation focusing on the unpaid loans and embezzled investments by Jowdy.
 - Exchanged September 2009 emails with Kenner about the Jowdy loans from Hawai'i and Jowdy's denials in the Nolan arbitration,
 - ***And – ultimately – Michael Peca***
 - Testified in front of the SDNY Grand Jury – confirming that he knew **EVERYTHING** about the loans to Jowdy from Hawai'i (*confirming Gonchar's February 2010 proffer to the FBI and Galioto*),
 - His knowledge of the reasons for making the short-term loans to Jowdy in México,
 - His expectations of repayment at the funding date from Lehman Brothers (*consistent with Kaiser and Berard's 2009 arbitration testimony*),
 - The discomforts “***as a group***” (*just like Stevenson told the SDNY Grand Jury*) of Jowdy's lack of communication after he received the

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Lehman Brothers loan in March 2006 (*also consistent with Kenner's "LACK OF COMMUNICATION" email to Jowdy in October 2006*),

- And – his full, unfettered knowledge of the loans when they were being made – ***without a single complaint to the SDNY Grand Jury.***

Even in December 2011 – which would have been long after Michael & Kristen Peca would have allegedly been ***"fed-up" with Kenner, the Palms, the Hawai'i investment, the LOC LIES, the myriad of litigation with Jowdy for UNPAID LOANS (something Michael Peca claimed to the EDNY he was not aware of), the GSF and Eufora problems with Constantine, etcetera*** – Michael Peca contacted Kenner about vacationing in his AZ guesthouse with their family & New Year's plans.

The entire Peca family wanted to stay at Kenner's home in AZ -- two and a half (2 ½) years ***after*** Northern Trust LOC loss of 1.775mm that allegedly ***SHOCKED*** Kristen Peca...

The Pecas were still close friends with Kenner and wanted to stay on vacation at Kenner's home to spend time with his family.

Again – these are not actions of double-crossed or betrayed persons.

(Kenner responses in RED)

146 71	+1716374 3234 Michael Peca*	12/22/2011 4:57:48 PM(UTC+0)	Read	Ok, if you're around that week we come in, <i>is your guest house available?</i> Just checking in case Karen can't find something in DM	
104 19	+1716374 3234 Michael Peca*	12/22/2011 4:59:16 PM(UTC+0)	Sent	<i>Either guest or main house (or both). I'll make it available for all you guys. No problem. I'd look forward to it, buddy. Hopefully a few things to celebrate. Pk</i>	
146 72	+1716374 3234 Michael Peca*	12/22/2011 5:23:29 PM(UTC+0)	Read	<i>He'll ya</i>	

And after the planned visit –

148 07	+1716374 3234 Michael Peca*	12/29/2011 1:20:45 AM(UTC+0)	Read	Dude, what's up?? What are your plans for new years??	
106	+1716374	12/29/2011	Sent	<i>Hey bud. Happy holidays. I've been offline</i>	

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17	3234 Michael Peca*	2:28:14 PM(UTC+0)		working on separate criminal actions for us for a few days. In AZ with my kids For The next few Days. No new years plans. I hope you have a good placed picked out for a 12:01 beer!! Pk	
148 35	+1716374 3234 Michael Peca*	12/29/2011 7:05:23 PM(UTC+0)	Read	Let me know if you're free to give any update of outlook on Cabo situation. Thanks	
106 29	+1716374 3234 Michael Peca*	12/29/2011 8:56:03 PM(UTC+0)	Sent	Yep. A little later	

Despite Kristen Peca claiming Kenner was tough to find after 2009 – Kenner's responses with Michael Peca were in real time and no apparent delays thru the end of 2011 (above)...***years after they told the EDNY jury that Kenner was hard to get ahold of...and living in a cave in México...***

See R33 575 -- Kristen Peca – hiding in a cave in México claims

Please note that by 2009 – not one of the Peca's investments were controlled by Kenner – including but not limited to –

Diamanté del Mar (\$500,000)– managed by Jowdy (*and with Michael Peca represented by Ronald Richards*),

Diamanté Cabo (\$200,000)– managed by Jowdy (*and with Michael Peca represented by Ronald Richards*),

Hawai'i (about \$1,800,000)-- managed by Kaiser (*and with Michael Peca represented by Tom Baker*),

Peca's Charles Schwab account – (About \$5mm) managed by Jim Graham at GGA,

Michael Peca's \$5mm Las Vegas penthouse (*titled in Peca's name*),

Michael Peca's \$2.5mm Arizona home parcel (*titled in Peca's name*),

Michael Peca's \$500,000 Buffalo NY home (*titled in Peca's name*),

Los Frailes México (\$1,000,000)-- managed by Robert Gaudet (*and in direct communication*),

Etcetera

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- Thus – there was ***nothing*** they needed Kenner for related to getting at their respective investments.
- ***The EDNY statement was purely designed to denigrate Kenner to the EDNY jury...***
- This communication pattern between Kenner and Michael Peca was the same thru the summer of 2012 until Kristen Peca and Michael Peca recorded Kenner.
- In fact -- in 2009 – from the date of the ***first notice of default letter*** (*February 2009*) – until the end of 2009 Kenner sent **about 275** TEXT ONLY messages to Michael Peca (*not counting emails &/or phone calls*).
- And – Michael Peca sent **about 580** responses to Kenner during the same February 2009 thru December 2009 time frame – when Kristen Peca said Kenner was not reachable (*all in EDNY evidence*).
- ***Kenner is not aware of what Michael Peca concealed about the financial relationship between Kenner and Michael Peca at any point in time – since Kristen Peca was NOT Kenner's client.***
 - In addition – there was a face-to-face meeting in the Peca's OHIO Living room May 7, 2009 – five (5) weeks after Michael Peca spoke to Northern Trust Bank to confirm the seizure of collateral and authorization to transfer the balance of the Northern Trust funds to his Schwab account (*under Kenner's control*)...
 - Michael Peca was with Kenner in Los Angeles in January 2010 for an all-day mediation (*along with 10 of the other anti-Jowdy plaintiffs, Constantine, Kaiser, Kenner and Ronald Richards*)...
 - ***Only a few weeks later*** – Michael Peca was in Vancouver for the 2010 Winter Olympics with Kenner and got together for dinner, drinks (*with a few Molson beer girls that Michael Peca had set up for both of them*) on multiple occasions – *behaving like old friends without any issues.*
- In fact – Michael Peca told the EDNY that he was free during the February 2010 Olympics to be deposed in the CA case versus Jowdy – but Michael Peca was NOT actually FREE – because he was being paid by CBC (*Canadian Broadcasting Company*) to be in Vancouver broadcasting the Olympics – thus – ***another bald-faced lie...***
- Kenner notified Peca and the rest of the investors that another slander news story had been written thru Jowdy's attorney (*Tom Harvey*) to defame Kenner and ruin any future credibility for Kenner...
- Kenner also notified Michael Peca that he would be in NYC in mid-February (*before knowing that Michael Peca would also be in Vancouver with Kenner*) in order to

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arrange a face-to-face meeting to discuss all of the OPEN ISSUES with Jowdy and the multiple litigation efforts.

See R33 576 -- Michael Peca confirms Vancouver meetings and being paid to be at the Olympics

This is also the same period of time that every one of the 19 CA Plaintiffs received the January 5th and 6th, 2010 2-day Jowdy depositions. The depositions were made available to all of them to confirm that Jowdy had admitted to all of the "**loans**" he received over the years from Hawai'i, Norstrom, Stumpel, Kenner, Gaudet, and others – except for Glen Murray (*since that case had not yet been adjudicated in Kenner and Murray's favor until December 2010 – for more unpaid LOANS to Jowdy in Nevada*).

Kenner client, Mattias Norstrom, and \$4mm+ victim of Jowdy's confirmed he read the 2-day deposition transcripts after receiving them from Kenner.

13810	+46708874363 Mattias Norstrom*	2/9/2010 7:14:07 PM(UTC+0)	Sent	How are you my friend?	
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11990	+46708874363 Mattias Norstrom*	2/9/2010 7:29:15 PM(UTC+0)	Read	Good,how are you? <i>I spent a couple of hours today reading transcripts. A lot of "I don't know"! He did answer questions reg. the airport deal.? Any impo</i>	
11991	+46708874363 Mattias Norstrom*	2/9/2010 7:29:18 PM(UTC+0)	Read	rtant progress?	

13812	+46708874363 Mattias Norstrom*	2/9/2010 7:42:38 PM(UTC+0)	Sent	<i>Jowdy said ALL the airport \$\$ came from you and me! Progress is slow. Gonchar and mckee were in NYC yesterday interviewing with the Feds. They shared a lot the Feds were terribly misinformed about.</i>	
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Ultimately Kenner got together face-to face with many of the Jowdy Plaintiffs in Vancouver to discuss the ongoing strategy including meetings (*as evidenced by the texts -- below*) with multiple clients together creating further transparency – especially believing as a group that the FBI was going to Indict Jowdy with all of his January 2010 deposition confessions of the thefts, bribes, embezzlements and unpaid loans (*with no repayment plans*)...

See R33 577 -- Kenner OPEN communication during Vancouver February 2010 Olympics re- face-to-face meetings

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Every one of the plaintiffs were in constant communication with Kenner – despite the EDNY testimonial rhetoric from Kristen Peca and others – ***and in communication with each other*** – NEVER discouraged by Kenner...***NOTHING WAS CONCEALED***...

In fact – the day Kenner got back from the February 2010 Vancouver Olympics – Kenner arranged to meet Sydor face-to-face to discuss the pending litigation issues with Jowdy and what Kenner had discussed with the other Jowdy plaintiffs in Vancouver (*some of which were his teammates and close friends – like Lehtinen and Norstrom*) –

See R33 578 -- Sydor meeting plans in February 2010 to discuss Jowdy litigation

It should not be overlooked that Michael Peca was also a close friend and acquaintance of Kenner's ex-client Owen Nolan (*despite Nolan's 2009 & 2015 perjury about LOC knowledge*) since the 2002 Olympics in Salt Lake City Utah – when they were roommates on their way to winning a Gold Medal with Team Canada –

23	Q.	I want to ask you a question, do you know Owen Nolan?
24	A.	I do.
25	Q.	Who is he?
M. Peca - Direct/Miskiewicz		
		432
1	A.	Owen Nolan was a professional hockey player, I was a
2		teammate of his at the 2002 Olympics, in fact, we were
3		roommates at the 2002 Olympics.

- Michael Peca could easily have contacted Nolan after he heard about the Nolan versus Kenner arbitration (*from Kenner*) in 2008 and the erroneous Nolan \$2mm judgment in 2009 to buy Nolan out of his Hawai'i investment (*based on Nolan's NO LOC knowledge testimony*)...***BUT he did NOT!***

Instead – Michael Peca chose to ***LIE and PERJURE*** himself in 2015 with the government's full-knowledge and support about the initial use of his LOC (*despite the documents he immediately signed in 2005 (below) recognizing the use of funds from Northern Trust Bank*).

See R33 579 -- Michael Peca denies knowing his LOC funds were drawn on...

Despite his contradicting testimony to the real evidence -- Michael Peca signed the following documents in 2005 – immediately following the opening of the LOC – ***that CLEARLY recognized and acknowledged the use of funds.***

See R33 580 -- NT 2005 Peca Letter of Authorization for Little Isle 4

See R33 580a -- NT 2005 Peca Extension of Credit

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See R33 580b -- NT 2005 Peca Disbursement Request & Authorization

- This document confirmed that Michael Peca used \$1.6mm within four (4) months of the LOC opening AND SIGNED the confirmation document...

Please note that ALL of these documents were mailed by Northern Trust Bank to Michael Peca directly, signed and returned by Michael Peca to the bank.

Michael Peca confirmed this to the SDNY Grand Jury that he signed the Letter of Authorization.

See R33 581 -- Michael Peca SDNY confirmations and underlying Northern Trust docs

In fact – to underscore the frauds on the court – in February 2006 (*less than a year after the LOC was opened at Northern Trust Bank*) – Peca received a **LOAN STATEMENT** (*one of the few random ones that Northern Trust produced for the trial*) at his secondary address in Canada where Michael Peca lived during the hockey season (*October thru April*).

Thus -- ***NOTHING WAS CONCEALED FROM Michael Peca &/or his wife...***

- Please note that someone had to give Northern Trust Bank the alternative address for Michael Peca – so clearly Kenner &/or Michael Peca were disclosing that information to Northern Trust bank...

See R33 582 -- NT 2-17-2006 LOC Loan Statement (Calgary address) - Peca

- Please note that this statement is also outside of the 6-9 months Michael Peca and Kristen Peca both claimed to the EDNY they were told the funds needed to be used and returned. Not one complaint thru the recorded calls in 2012 – ***six (6) years later*** – is recorded (*by text, email or other*) about the **OPEN LOC** – &/or any **BROKEN PROMISE** by Kenner. It was simply more government fabrications and shamming carried out by willing, prepared and alacritous perjurers in the EDNY courtroom...

Even EDNY antagonist Berard was in full support of Kenner in February/March 2010 and the FBI efforts to chase Jowdy and his cabal – ***despite his EDNY fabricated testimony about losing faith in Kenner in Spring 2009*** -- after the known temporary dismissal of the CA case versus Jowdy – due to Jowdy's deposition scheduling during the February 2010 Winter Olympics and *Jowdy's January 2010 admissions of theft, embezzlement, bribery, unpaid loans, other frauds and NO USA ASSETS...*(see texts below)

During the July 22, 2012 recorded call by Kristen Peca (*unknown to Kenner*) – they discussed Kenner not testifying to the Grand Jury about Jowdy – which Kristen Peca thought Kenner had done –

Kristen Peca – I don't understand why the FBI would be considered bad...wouldn't they want to be the one neutral party that you would want to trust, Phil? Wouldn't you want that?

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Kenner – Kristen – we thought in 2008 or 2009 they were helping us when the convened a Grand Jury on Ken Jowdy – (*LONG PAUSE*) – They convened a Grand Jury on Ken Jowdy after we collectively filed that lawsuit (CA).

Kristen Peca – ok...

Kenner -- In 2009.

Kristen Peca – Right...

Kenner – Two days later they got on the phone with me and they said – Hey Mr. Kenner -- thanks for getting on the phone with us – it was a guy named Matt. Does that sound familiar?

Kristen Peca – Yeah – Matt is the one name I know.

Kenner – Yeah – exactly – exactly – Who is the one person on this planet you think knows how to lead the FBI to all of the shit that Jowdy has done?

Kristen Peca – Get – wait – who knows how to what?

Kenner – Who is the one person on this planet?

Kristen Peca – Yeah...

Kenner – That has – can tell anybody and everybody – lets say the FBI – can tell the FBI – where Ken Jowdy put all the money – how he deceived us – etcetera -- etcetera – Who is the one person on the planet who can tell the FBI this is the blueprint of all of the frauds by Jowdy?

Kristen Peca – *I thought you already did tell them that...*

Kenner – ***THEY NEVER TALKED TO ME*** – Kristen...They never interviewed me. NEVER. They NEVER interviewed me. I spent time on the phone with them – and they said – oh my G-d – thank you Mr. Kenner – thank you so much for participating with us – we are going to subpoena you to come to NY to testify in front of the Grand Jury in 2009 – and tell them everything you know – bring all of the records you have – explain to them where Jowdy took the money – hid the money – did with the money – and I said – ABSOLUTELY...So on day 3 of that investigation – they turned around and gave us gave me a subpoena – 10 days later – the government – 10 days later – the government – took the subpoena away...NEVER interviewed me. It is impossible for the US government – the FBI – and a guy named Matt – to conduct an investigation on Ken Jowdy without interviewing me – its impossible – and they never did – they never did – and it is because Jowdy's attorney is the former FBI Director – its Matt's former boss. It is not like Darcy Reiger (*the Buffalo Sabres former General Manager*) calls Michael and asks him to do something kinda unethical – but the former FBI Director – OK?

Kristen Peca – You think he is being unethical?

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Kenner – ***Fucking right he is! 100% -- no question – I would go on 60 Minutes and tell the fucking world the former FBI Director fucked us all...and then I'd have to move to the smallest corner of this earth – and you don't think the FBI will crawl up my ass for the rest of my life?***

Kristen Peca – Well -- unhhh?

Kristen Peca was not the only person waiting for Kenner to testify in front of the Jowdy Grand Jury to put an end to the years of thefts, embezzlement, bribes, payoffs, UNPAID LOANS, etcetera...

All of the Kenner clients (*including Berard – below*) were puzzled as to why Kenner was never rescheduled to meet with the Jowdy Grand Jury about all of the Jowdy thefts, etcetera that Kenner explained in his June 24, 2009 proffer – ***specifically to agent Galioto.***

See R33 583 - Berard wants to know when Kenner is meeting with feds for Jowdy

In fact – after the Gonchar (*February 2010 proffer with Galioto -- below*) and the McKee March 1, 2010 proffer – where McKee confirms Jowdy LIES about Roger Clemens – right from Jowdy's mouth –

of FD-302 of JAY MCKEE, On 2/8/2010, Page 3

was told that JOWDY knew many major league baseball players and that ROGER CLEMENS had pick out a lot on the property. Having baseball players in the investment was a big selling point to MCKEE. MCKEE recalls JOWDY doing most of the talking during his dinner meeting.

Despite Jowdy's ongoing misrepresentations to Kenner and the Kenner investors – also confirmed by Jowdy employee, Robert Burdick -- to Galioto in a 2009 proffer (*below*) – Jowdy consistently lied about BIG NAME baseball players being involved as investors in the various Jowdy real estate projects – ONLY one baseball player invested like Kenner and his clients; Scott Eriksson.

See R33 584 -- Jowdy employee confirms lies about MLB (Baseball) players involved thru Jowdy LIES

- These were CLEARLY LIES told to Kenner, McKee and others by Jowdy from 2002 until Kenner confronted him in 2007 – once the frauds were caught by Kenner...

Galioto set up NO other meetings or proffers after Kenner's clients confirmed their 100% knowledge of everything related to the investments – specifically in Hawai'i and México.

The Jowdy investigation ceased with Kenner and the Kenner investors related to Jowdy until the March 29, 2011 SDNY Grand Jury testimony by Michael Peca, Sydor and Stevenson – ***all in support of Kenner's actions versus Jowdy***, Kenner's 100% disclosures of the loans

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to Jowdy, the investor's collective knowledge of the loans to March at the time of the loans, and the investor's collective disgust with Jowdy's non-actions related to the unpaid loans, project thefts, embezzlements and bribes since acquiring the \$125mm loan from Lehman Brothers for the Diamanté March project in March 2006, etcetera.

Kenner then told Berard that the FBI was screwing up the Kenner banking and credit businesses with a myriad of subpoenas – eventually destroying Kenner's businesses...

See R33 585 -- Berard supporting Kenner one year after allegedly losing faith (per EDNY testimony)

- At this point in time – no one knew that a Grand Jury had been convened on Kenner
 - Please note that ***IF*** Berard thought he was defrauded with his Northern Trust LOC by Kenner – ***this would have been the perfect time to tell Kenner that Kenner was a FRAUD*** – especially since it was about one full year after Berard told the EDNY that he no longer thought Kenner was legitimate (*another government induced LIE*).

Although Berard told the FBI that he received a letter in the mail about his LOC collateral being taken – ***no letter like that ever existed***. In fact – Berard clearly was in communication with Kenner about the LOC and had no concerns because he was fully aware of the use and Hawai'i/Jowdy issues.

See R33 586 -- Berard discusses LOC seizure a week before the funds were seized without complaint

BUT -- Berard LIED in the EDNY that he received a call while in Russia that he LOST \$1mm – without any communication with Kenner.

See R33 587 -- Berard lies about Northern Trust calling him for first LOC news

Every one of the LOC clients had to speak with Northern Trust ***BEFORE*** they seized the collateral, since Northern Trust wanted verbal confirmations that they did not want to continue the payments on their own – *like Nolan did independently...*

Every LOC client spoke to Northern Trust and confirmed the decision to release the collateral and transfer their remaining funds to their respective Charles Schwab investment accounts under Kenner's Power of Attorney and investment control...thus none of the clients – ***specifically Berard*** -- had issues with Kenner at the time of the seizure.

In fact – 15 months later – Berard confirms with Kenner – ***“He doesn't know u as well as I do “ and “ Ur good wth me buddy. Just gotta keep between us now”*** -- since Berard was vouching for Kenner with another 3rd party business partner – while trying to secure the funds to buy out the Eufora loan (*which he also denied full knowledge of at the EDNY – thus more suborned perjury*) --

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74 4	46929 Bryan Berard*	0 7:45:24 PM(U TC+0)	d	get me loan too. <i>He doesn't know u as well as I do.</i> So questioning it	
13 74 5	+140152 46929 Bryan Berard*	6/7/201 0 7:48:38 PM(U TC+0)	Rea d	<i>Ur good wth me buddy. Just gotta keep between us now.</i> Tommy and Jowdy. Who wld of known. \$ makes people greedy	

The text (*above* – **R33 586**) from Berard is 5 days before Berard spoke with Northern Trust on the phone to confirm the collateral seizure and subsequent transfer of the remaining funds to his Charles Schwab investment account ***under Kenner's ongoing control and Power of Attorney...***

Berard confirms he is **COOL** with the Northern Trust LOC issues – loss of collateral – and looks forward to a new investment with Kenner – stating -- “***Good for all of us n future***” ...at the time of the collateral seizure.

See R33 588 -- Berard contradicts EDNY testimony with pro-Kenner texts at the time of the LOC seizure...AND for years afterwards

Ultimately – Berard's entire testimony about the loss of his LOC is **PERJURED and PREARRANGED** with the government – since it is refuted by all of the documents related to the Hawai'i deal that Berard signed in EDNY evidence...including but not limited to his initial communication between Berard, Kenner's assistant (*Myrick – who Berard was having a sexual affair with*), and the Northern Trust banker in charge of the Berard investment account.

See R33 589 -- Open communication for Berard's Northern Trust LOC – full transparency

As a result of this correspondence between Myrick and Northern Trust Bank – Berard signed the following Letter of Authorization and other documents to start his LOC for the Hawai'i investment – which were sent directly to Berard's home in Rhode Island per the fax instructions.

Please note that from the fax communication above – Berard received all of the paperwork on his own home in Rhode Island and ***based on his 2009 testimony in the Nolan arbitration (below)*** – Berard confirmed that his Rhode Island family attorneys reviewed all documents before he signed anything – further confirming that Berard had 100% understanding of his actions and what he was signing for in 2005 –

AFTER Berard's LOC was seized by Northern Trust and the 2015 EDNY was told he knew nothing about it except for the call from the bank while he was in Russia and his later 2013 FBI proffer that a letter (*of which does not exist*) informed him via FedEx that all of his collateral was gone – Berard gave the following May 2009 arbitration testimony --

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23 Q. And prior to signing any of these documents did
24 you have access to your own attorney unconnected to
25 Mr. Kenner to review this?

917

1 A. Yes, I did. We have a family attorney back home
2 where before I sign any documents basically -- I went to
3 his office, sat with him. We reviewed them, and I signed
4 them and basically FedEx'd them to Phil.

In Berard's own words from 2009 – Berard confirmed that his family attorneys review all documents before he signs them – so it is not realistic that documents that have been confirmed as mailed to Berard's home (*see fax above*) would not have been reviewed. Berard gave this testimony in 2009 (*after the seizure of his collateral – without negative claims against Kenner*).

Thus – Berard had finished signing all of the documents for Northern Trust by the time of his testimony. Berard did not claim to the 2009 arbitration panel that he only had the family attorneys review a few of the documents and the rest he did under duress with Kenner in his presence.

See R33 590 -- Berard signed acknowledgments of his LOC and use of funds – contradicting all of his EDNY PERJURED testimony

Despite the fact that Berard signed Disbursement Request and Authorizations three (3) years in a row ***CONFIRMING*** the used funds for the Hawai'i project – Berard ***LIED*** to the FBI in 4-22-2013 that he was not aware his LOC funds were being used.

See R33 591 -- Berard lies to the FBI about LOC use of funds in 2013 – while working in México for Jowdy

- Notwithstanding the Northern Trust Bank documents signed by Berard -- it is ***NOT BELIEVABLE*** – specifically since Berard's family attorneys reviewed all documents (*per his 2009 testimony*) before he signed anything...

Berard claimed that he never received Hawai'i paperwork for the deal after the April 2009 default – ***but the only paperwork that would have been expected are the tax documents that the Managing Member of Na'alehu Ventures 2006 (his best friend – John Kaiser) has NOT produced...***

There were no documents expected from Kenner...YET – Berard ***LIED*** in testimony at EDNY.

See R33 592 -- Berard lies about post Hawai'i closing paperwork

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After the 2006 JV funded by Lehman Brothers (*as seen above*) – Berard reduced his Hawai'i LOC investment exposure to \$650,000. He received a \$300,000 settlement “*for an unknown reason*” from Northern Trust Bank after 2009 – but LIED to the EDNY that he still lost \$700,000 in the Hawai'i deal – even though Berard was never given an “*investment guarantee*” that he would only make money and never lose...

See R33 593 -- Berard was NEVER pressured to sign documents by Kenner

None of the texts (*above*) between Kenner and Berard appear to represent Berard as ***NOT HAPPY &/or CONFUSED***. It was more prepared slander and defamation of Kenner's character...

In fact – after testifying voluntarily to the 2009 arbitration in support of Kenner – it should be noted that Berard also signed Master Notes for his LOC in 2003, 2005, 2007 & 2008 (*all before the default in 2009*)...

Despite Kenner's efforts with Lehman Brothers starting in mid-2005 to secure funding in Hawai'i – Berard LIED to the FBI about the Lehman Brothers funding as the reason for his 2003 LOC. Kenner did not even meet the people from Lehman Brothers until late 2004 – *over a year after Berard established his 2003 LOC*.

Berard – in his final efforts to assist Agent Galioto with a contrived and deceitful Indictment in the EDNY – Berard found no limits to the lies and manufactured issues he disclosed during his innumerable and planned proffers...

See R33 594 -- Berard lies about timing of LOC and Lehman Brothers funding efforts

In fact – Berard's 2003 LOC was signed two (2) months before Kenner CLOSED on the first \$720,000 parcel of land in Hawai'i (*closed December 2003*) – of which ***ZERO*** of Berard's funds were used for...

Berard's first disbursement to Little Isle 4 did not occur for another eighteen (18) months in March 2005.

See R33 595 -- Actual Berard LOC usage and four years of Northern Trust documents

And finally – Berard sent his congratulations a few days later – like a number of other Kenner clients after the news of the Juneau case being dismissed (*with Moreau to follow within weeks*) – despite the fact they were identical to the Nolan case.

Nolan, Juneau and Moreau all shared the same attorney (*who was working with Jowdy and Harvey*) and knew they pulled out a “***rabbit's foot***” in the Nolan arbitration – since they were 100% aware that Nolan perjured himself about the Northern Trust LOC knowledge – the only source of the “***Hawai'i buy-out judgment***”.

The “***cookie-cut***” complaints were dismissed before Kenner could file counter-suits against both Juneau and Moreau.

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Shortly thereafter – Kenner's former employee, Myrick, who was working with Jowdy and the same attorney – settled for six (6) figures in an out-of-court settlement **PAID TO Kenner** for the slander, defamation and unethical business practices related to Kenner's business (*stealing Kenner company server and all back-up files*) after her termination “**for cause**” – including but not limited to having sexual relations with Kenner's clients, drug abuse and other irreparable issues...

See R33 596 -- Kenner case victory responses

See Gonchar's 3500 interview notes (*below*) confirming to Galimoto that he was 100% aware of the loans to Jowdy from Hawai'i (*thru Kenner's information*) and also independently from Jowdy while in México with Jowdy...

It is **incomprehensible** that five (5) years later – *with the plethora of admissions and the SDNY Grand Jury testimony* – **explicitly from Jowdy and the Kenner investors** – that the government pursued a “**FAKE Hawai'i LOAN theory**” in the trial – which slanderously biased Kenner throughout the trial.

Agent Galimoto received the same depositions in the mail from Kenner and called Kenner to threaten and intimidate Kenner for passing along information to the FBI &/or any DOJ office – ***specifically without his formal request.***

Kenner was told by Galimoto **NOT** to do that ever again...

After Jowdy's January 2010 **confessions** of all the thefts, bribes and frauds against Kenner and the Kenner investors -- Gonchar (*below*) checked in with Kenner to make sure Galimoto received the 2-days of Jowdy confessions to all of his thefts and bribes of Kenner as follows

–

- Please note that this was the first time Jowdy changed his legal claim that all of the Hawaii \$\$ were now “**loans**” to him and not the “**investments**” that he (& Najam) fraudulently claimed in the Nolan Arbitration and the Jowdy 2009 AZ lawsuit for the loans!
- Kenner shared with everyone (*all the Hawai'i and Mexican investors*) that Jowdy had confessed (*thru perjury*) that the funds were really “**LOANS**” – now in 2010.
 - This is despite the fact that everyone knew that Jowdy copped to all of the debt he owed Kenner and the Kenner investors in the 2007 negotiations with Constantine (*below*)...thus flip-flopping to suit the “**defense of the day strategy**” employed by Jowdy and Tom Harvey...

See R33 034 -- Jowdy-Constantine confirm \$8.5mm PLUS in debt to Kenner

Gonchar confirmed that Galimoto &/or the FBI had been sent the Jowdy confessions from the January 2010 depositions via email.

- Please note that Gonchar had just proffered with Galimoto four (4) days earlier (*on February 8, 2010*) and explained that he and all of the investors were aware of the loans to Jowdy – with Gonchar confirming that he was

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actually told by Jowdy that funds were loaned to him from the Hawai'i project (*below*).

See R33 597 -- Gonchar inquires about Galioto receiving the Jowdy 2-day deposition confessions

The February 2010 Galioto phone threat to Kenner was the last communication with Galioto until Kenner and the investors learned of his pro-Jowdy efforts about one year later. Galioto and other FBI agents personally served subpoenas at Madison Square Garden to Gonchar and McKee – ***so the entire NHL would find out about it*** – instead of communicating with their known attorney – Ronald Richards.

It was CLEARLY calculated to land a deafening punch to the anti-Jowdy efforts and disparage Kenner's efforts.

In fact – during the Gonchar February 2010 FBI proffer – Gonchar confirmed to agent Galioto and the other DOJ investigators that both Kenner and Jowdy “***independently***” had confirmed the Hawai'i loans to Jowdy.

See R33 598 -- Gonchar confirmed to the FBI that he knew of Jowdy loans from Kenner and Jowdy independently

Despite Gonchar's February 2010 FBI proffer and Gonchar's previous 2009 affidavit he turned over to the FBI (***See 3500-SG-4***) – both confirming his knowledge of the “***loans to Jowdy***” – the government still pursued that “***NO LOANS theory***” with ***NO TANGIBLE*** evidence -- in fact – with 100% CONTRADICTING evidence in hand – thus – prejudicially ***DISREGARDED*** by the government and Galioto (*who was present at every one of the proffers and during the known trial PERJURY*)...

Two days later (*on February 12th, 2010*) – Gonchar asked Kenner via email again IF Galioto had been sent the Jowdy 2-day depositions. Gonchar was equally anxious as the rest of the Jowdy investors for the FBI (*thought to be investigating Jowdy before learning of the quashed EDNY Grand Jury with Freeh's help from a Jowdy-insider, Matt Boland*) to conclude their investigation on the tens of millions of dollars of thefts and embezzlements Kenner alerted Galioto to in June 2009.

See R33 599 -- Gonchar inquired a 2nd time about Galioto receiving the Jowdy confessions

- Kenner was told about the ***QUASHED*** Grand Jury by Jowdy's employee and ***war-room-insider***, Matt Boland and the subsequent re-direct by Galioto on Kenner to destroy any prosecution efforts by Kenner and on behalf of his investors.

Notwithstanding Kaiser's relationship as the Managing Member of the Hawai'i partners from December 2007 to present – and his personal fundraising efforts with “***friends & family***” in 2005 to further fund the loans to Jowdy (*specifically for the 15% interest – as he testified to in the 2009 arbitration*) -- It would have been impossible to Kaiser to testify truthfully in the EDNY that he did not think Jowdy took the loans from Hawai'i – ***BECAUSE*** Kaiser was present for the 2-day depositions and the Jowdy full ***CONFESSIONS*** –

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THUS – CLEAR SUBORNED PERJURY

(Known by Galioto and the government during Kaiser's EDNY testimony)

Notwithstanding all of the meetings Kenner had in Vancouver with the Jowdy Plaintiffs (including Michael Peca) – the communication levels with Peca were fluid and uninterrupted before, during and after the multiple meetings over the 6-7 day period (in February 2010).

In fact – as denoted in the other texts – Michael Peca also met with some of the other Jowdy plaintiffs with Kenner and while in Vancouver without any concerns raised over Kenner actions related to the loans to Jowdy or otherwise...

See R33 600 -- HEAVY Kenner and Peca communication – while Kristen Peca told EDNY they could not reach Kenner

So -- ultimately a year after Kristen Peca told the EDNY that they had no faith in Kenner and completely lacked regular communication – ***Michael Peca asked Kenner to take care of the family Estate Planning work...***after a week in Vancouver together.

It is completely illogical based on Kristen Peca's planned and slanderous EDNY testimony...not overlooking the simple fact that she was not Kenner's client and Kenner had no fiduciary communication obligations to her whatsoever.

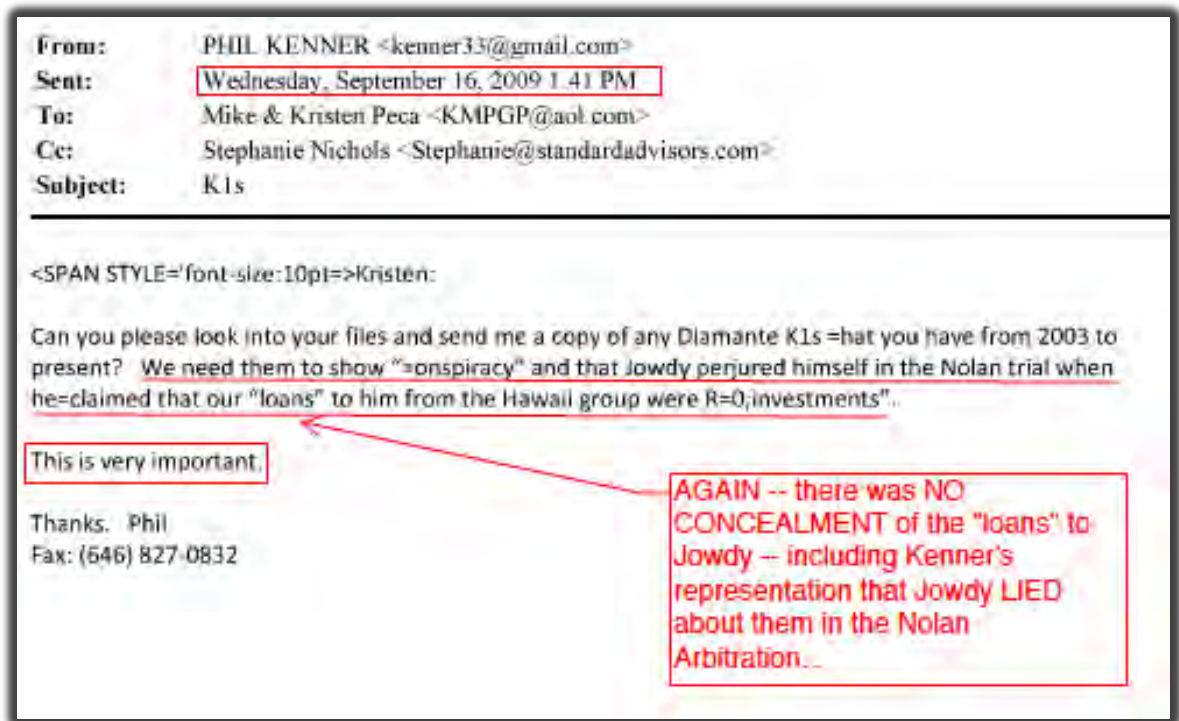
In fact – much closer to the actual LOC collateral seizure event (only 4 months afterwards in September 2009) –***after*** Kristen Peca allegedly being defrauded, not notified and her alleged ***SHOCKED*** incident in Ohio (despite the fact that the ***DEFAULT*** letters were mailed to their NY home – raising clear story-authentication issues) – and a series of other alleged deceptive actions by Kenner (thru Kristen Peca contradictory and foundationless EDNY proffer) – Kristen Peca told Kenner that she and Michael Peca would like to take Kenner's girlfriend and kids ("kiddos") out to a "***nice night***" while they are there ***in AZ for a family vacation...***

See R33 601 -- Kristen Peca contradictory email to Kenner after alleged SHOCK incident

Despite all of this – there is not one text or email from Michael Peca or Kristen Peca questioning Kenner for the alleged EDNY crimes – ***NOT ONE until the EDNY (6 years later)!***

In fact – on the same day (& only 2 hours later) that Kristen Peca uses the Kristen Peca & Michael Peca joint email to talk about vacation plans with Kenner in AZ – the following ***CRITICAL DISCLOSURE*** email was sent from Kenner to the Pecas confirming the "***loans***" from Hawai'i that were lent to Jowdy --

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PK_SEC_005297

No response came back from the Pecas – stating – “***What loans to Jowdy?***” -- &/or – “***You never mentioned the loans before***” ...

Notwithstanding the clear and representative ongoing and transparent communication between Kenner and the Pecas – Michael Peca ***LIED*** to the EDNY thru government-led questions that ***he was not aware of the loans to Jowdy*** before his 2011 SDNY Grand Jury testimony (*although someone in the Peca house was reading and responding to these emails from Kenner*).

Michael Peca gave the EDNY PERJURED testimony about the Jowdy loans, how he learned of the Hawai'i loans to Jowdy, his knowledge and timing of them (contradicted by Sydor who was in the same prep session).

See R33 602 -- Michael Peca LIES about SDNY Grand Jury prep and timing of Jowdy loan knowledge

Clearly Michael Peca was aware of the Jowdy loans (*with the September 2009 email going thru Kristen Peca's email account*). NEITHER Kristen Peca NOR Michael Peca contradicted Kenner's representation to them in the September 2009 email (*above*) – but somehow Michael Peca was not aware of the loans *when* he was allegedly prepped for his March 29, 2011 – he learned about them for the first time? The testimony is wholly prejudicial and

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contemptible considering the volume of communication between the parties and the volume of independent attorneys who were handling Jowdy loan cases directly on their behalf (*and all of the other Kenner clients -- as well*).

RULE 33 information –

- Please note that Michael Peca signed the Tom Baker disclosure about the Jowdy “**loans**” litigation seventeen (17) days before the Kenner email about the Jowdy perjury and “**loans**” in the Nolan arbitration.

See R33 A -- Baker Little Isle 4 Disclosure letters – (Michael Peca letter)

This confirms another Michael Peca SUBORNED PERJURY to the EDNY.

Now – ***in cross-examination by LaRusso*** – Michael Peca is cornered into confirming that thru Constantine in 2009 – he received the following information about the Ronald Richards litigation’s purpose (*at least one of them*) was to get the funds back from Jowdy for the unpaid loans – specifically from Hawai’i – so how did Michael Peca not know about this until 2011? ***MORE ENTICED and PREMEDITATED UNTRUTHFULNESS...***

See R33 603 -- Michael Peca independent knowledge of Hawai’i loans (not from Kenner)

Now – Kenner sent Peca the following text (5/1/2009) the same day and just ***prior*** to Michael Peca realizing that his wife’s AOL account received a ***PAYOFF*** email (*prompting the Michael Peca text -- “fn loose it”*) for the LOC – which put Michael Peca in a panic.

8040	+1716374323 4 Michael Peca*	5/1/2009 3:39:08 PM(UTC+0)	Sent	Just slowly moving thru the process. We have to get all the other legal hammered out in the meantime. <i>We are making great progress versus Jowdy. That will lead the rest of the deals like the <u>Hawaii</u> loans, etc</i>
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- This is clearly more knowledge of the “Jowdy loans” ***LONG-BEFORE*** Michael Peca’s 2011 SDNY Grand Jury testimony...

Despite Michael Peca’s knowledge of the loans and the 1000s of text and email contacts between Michael Peca and Kenner from 2009-mid 2011 (*including face-to-face meetings*) -- Kristen Peca (*again – not Kenner’s client*) falsely and slanderously testified during the trial.

See R33 604 -- Kristen Peca falsely tells EDNY the Pecas could hardly find Kenner after 2009

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From the April 1, 2009 loss of LOC collateral until Kenner and Michael Peca were no longer working together (*with Kenner as his PAID business manager*) – there is **NO PERIOD OF TIME** that immediate and substantial text communications (*at a minimum – not including phone and in-person meetings which also took place*) are not in EDNY evidence – fully contradicting Kristen Peca's allegation. Kenner is not aware of what Michael Peca did or do not tell his wife about the volume of Michael Peca's nonstop communication with Kenner.

Even after the termination of Kenner's business manager responsibilities – Kenner continued **OPEN COMMUNICATION** until mid 2012 (*while under no legal &/or ethical responsibility to do so*) – DESPITE Kristen Peca's planned slander and defamatory comments at EDNY trial...

➤ ***Please note that the 800+ text are available upon request to the court from the final year of Kenner's paid fiduciary responsibility to Michael Peca (not Kristen Peca)...***

- In 2009 alone – from the date of the ***first notice of default letter*** (*February 2009*) – until the end of 2009 Kenner sent **about 275 TEXT ONLY** messages to Michael Peca (*about 1 per day*).
- And – Michael Peca sent **about 580** responses to Kenner during the same February 2009 thru December 2009 time frame – which Kristen Peca said Kenner was not reachable.

This period of time was inclusive of the face-to-face meeting in the Peca's OHIO Living room May 7, 2009 – ***five (5) weeks after Michael Peca spoke to Northern Trust Bank to confirm the seizure of collateral and authorization to transfer the balance of the Northern Trust funds to his Schwab account*** (*under Kenner's control*)...

In fact – after Myrick (*Kenner's former assistant*) stole Kenner's corporate files in 2007 – not only did Kenner have Michael Peca request his Northern Trust records for Kenner – which were grossly misused by the government at trial – *specifically related to the LOAN HISTORY REPORT ONLY RECEIVED seven (7) months after the seizure date in October 2009 -- AND NEVER BEFORE* – but Kenner had Michael Peca request their Schwab account back-ups -- as well.

See R33 605 -- Peca requests Schwab statement copies for Jowdy investigation

Then – Michael Peca lied to the EDNY about when he learned – now a different date – confusing his planned stories.

See R33 606 -- Michael Peca lies again about different date he learned of the Jowdy loans

Clearly – Michael Peca was aware of the loans to Jowdy for quite some time prior to the LOC collateral seizures – just like the remainder of the clients.

In fact as previously mention (*above*) – Michael Peca goes on to support another government misleading theory that could not have occurred based on timing.

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See R33 607 -- Michael Peca and government contrive another impossibly timed event

In the 2009 AZ Arbitration – Nolan versus Kenner – Peca signed the same affidavit as all of the other investors. A signed copy of the affidavit was at Kenner's home the day of the Search and Seizure but never turned over in the government production of materials.

Notwithstanding that fact – the following text from Peca to Kenner confirmed that he sent the signed affidavit to Kenner for the Nolan arbitration.

See R33 608 -- Kenner and Michael Peca confirm Michael Peca's signed affidavit for Nolan arbitration in 2009

Please note that each of the affidavits represented the same Hawai'i declarations (***including – Gonchar, Norstrom, Stumpel, Lehtinen, Glen Murray, Michael Peca and others***) -- as follows –

From Gonchar's affidavit -- (*as an example*) – ***See 3500-SG-4*** –

11. **HAWAII INVESTMENT GROUP;** I have been an investor in the Hawaii Investment Group since about 2004. In addition to setting up a Line of Credit for the sole use and benefit of the Hawaii Investment Group, I wired \$100,000 to Northern Trust Bank for my equity stake in the Hawaii Investment Group through Little Isle IV, LLC and for the express purpose of making funds available to Phil Kenner, which were to be used at his discretion. I was aware that my funds would be used to make

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distributions for the company, including but not limited to: Land Acquisition, Travel & Entertainment expenses, Legal Fees, Planning Fees, Payroll, Permitting fees, Loans to outside entities and distributions to other members that would satisfy their monthly Line of Credit payments to Northern Trust Bank. I also understood Phil was the sole signatory on the Little Isle IV, LLC bank account. I have never had any reservations or issues regarding the use of these funds. Phil Kenner has always disclosed the complete and detailed use of these funds with me from time to time and per my every request. We discussed in detail the risks associated with the Hawaii Investment Group and I elected to invest accordingly. Phil also discussed in detail, the merits of the Joint Venture agreement with WWK Hawaii Holdings, LLC prior to me personally signing the Acknowledgement and Acceptance letter Phil provided to me through our attorneys, Larry Markowitz and William Najam in July of 2006, which was prior to my agreement of the Joint Venture. I understand the global markets have caused many issues with the Joint Venture's ability to sell or liquidate the land holdings, but I am confident that the ~\$100,000,000 of land that Phil Kenner was instrumental in acquiring on behalf of the Joint Venture, is more than sufficient to ensure a positive investment result as originally contemplated prior to my involvement. From day one, I have also been made aware of Phil Kenner's significant interest in the Hawaii Investment Group in consideration of his ongoing capital contributions, day-to-day management, personal loan guarantees (including securing the Waikapuna loan with his Arizona residence at the time), his environmental guarantee on behalf of the Joint Venture (so none of the other members would be liable), as well as other contributions.

It was very suspicious that the Michael Peca 2009 affidavit disappeared from Kenner's office after the FBI search and seizure in November 2013.

Although the affidavit would have clearly destroyed Michael Peca's "***NO UNDERSTANDING***" line of responses – Michael Peca probably would have adopted the same government witness strategy of ***receiving, signing and returning documents*** as disclosures &/or

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banking records (*clearly outlining account usage*) through verified FedEx, email &/or texts – BUT – ***he never read them before signing so he isn't really sure what any of it meant.***

Although that may seem far-fetched on the surface – it is just like Michael Peca also claimed at the EDNY about receiving the “***First Grade Level***” GSF accounting spreadsheet from Ronald Richards (*his attorney who could have answered any necessary questions*), Kenner &/or his close friend, Jay McKee (*who also gave it to him*).

At that time – Michael Peca also was in direct communication with Tommy Constantine. Michael Peca could have inquired about any and all of the expenditures that Constantine approved and why – *BUT he did not.*

See R33 456 -- Ronald Richards - GSF accounting Sheet1

Michael Peca vindictively claimed to the EDNY that he could not verify GSF accounting sheet...thus Michael Peca had no idea what his funds were used for.

See R33 609 -- Michael Peca claims GSF spreadsheet was too difficult to understand and no way to authenticate it

Please note that Michael Peca was represented by Ronald Richards throughout the GSF process – who he confirmed to the EDNY he had a comfort level with and whose wife sent a supportive email about how to handle Jowdy issues – with their full trust in Ronald Richards – ***AFTER Ronald Richards' FULL DISCLOSURE and INDEPENDENT COMMUNICATION with his clients*** (*without Kenner*). In addition and two years alter – Michael Peca independently hired Ronald Richards to represent him during his 2011 SDNY Grand Jury appearance. *Nothing restricted Michael Peca (if true) from understanding &/or authenticating the GSF accounting spreadsheet given t him by Kenner and McKee.*

See R33 610 -- Michael Peca confirms comfort level with Ronald Richards as his attorney in multiple dealings

See R33 611 -- Kristen Peca confirms trust in Ron Richards after another full disclosure email with Jowdy's attorney in CA

How could Peca have been troubled with authentication in the slightest?

- Ronald Richards represented Michael Peca through the March 29, 2011 SDNY Grand Jury testimony.
- Tom Baker represented Michael Peca in the AZ loan issues case versus Jowdy.
- Michael Stolper represented Michael Peca in the 2010 Eufora case versus Constantine (*which included GSF discussions*).
- Kenner and Michael Peca were in constant communication (*see email and text evidence*) thru the 2012 summer recordings of Kenner.

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- Michael Peca was in constant and open communication with Constantine until late 2010.
- Michael Peca at all times had an independent investment advisor – Jim Graham at Greenberg Graham.
- Michael Peca’s closest personal friend in Buffalo NY is a practicing attorney, and
- Michael Peca had an independent accounting firm at all times handling his Federal; State and International tax related issues and filings.

Certainly – one of those professionals – or all of them together – could have deciphered the Ronald Richards one page cash flow spreadsheet – with NOTES related to the expenses paid by Constantine.

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Eufora loan buyout LIES –

Kaiser, Berard and a number of other government witnesses (*including Michael Peca and Gaarn*) CLEARLY lied about their knowledge and desire to be part of the Eufora loan buyout – in order to fit into the government’s theory that the only reason – according to Kaiser et. al. – for the litigation in 2010 versus Constantine and Eufora was to get the books & records correct.

The government misled the jury to believe that there were no records of “***who-owned-what***” – thus further supporting their slanderous theory that Eufora was just a fraudulent company to extract money from unknowing victims...

Despite this – the government IGNORED the February 2009 Eufora operating agreement signed by Gaarn (*himself*) – as well as all of the other officers of Eufora. Thus – the only shares not represented on the most recent operating agreement were three (3) sales Gaarn (*himself*) made after that date (*documented on the email between Eufora CEO, Gentry, and Gaarn -- Kenner 80 trial exhibit*) and the \$400,000 raised by Kaiser and Privitello – notwithstanding the 20% of Eufora Constantine owed Kenner for the “***grocery list***” loans.

See R33 055a -- Feb 2009 Eufora Operating Agreement w Gaarn & Constantine ownership (pages 35 & 37)

This February 2009 operating agreement confirmed the changes in equity from the Eufora 2007 Taxes – signed by Constantine.

See R33 541 -- Eufora Tax Return 2007 (pages 24 & 26)

During the Stolper-led efforts in 2010 related to Eufora and Constantine – the chief objective of the effort – once determined by Stolper, Kaiser, Berard, Gaarn and Gentry (*the original investigation team*) – as a management fraud – ***was to buy out the \$3mm loan from Neptune Capital*** in order to control the destiny of Eufora without Constantine and his associates in control.

During the EDNY trial – the following statements (*only a small sample*) were made by various Eufora investors who were not only aware of the efforts to buy out the Neptune loan – but some of them were actively involved in funding the buy out efforts – fraudulently testified as follows.

See R33 613 -- Kaiser fraud testimony about Eufora loan buyout information

See R33 614 -- Nash fraud testimony about Eufora loan buyout

See R33 615 -- Sydor fraud testimony about Eufora loan buyouts

See R33 616 -- Berard fraud testimony and contradicting text re – Eufora loan buyout

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Berard then went on further to confirm his **HIGH TRAFFIC** communication with Kenner regarding the buy out of the loan from Brent (*owner of Neptune*). Berard knew more than Kenner (*from Stolper or Gaarn*) about the LOAN deal with Brent (*Neptune*)...

See R33 617 -- Berard texts re -- Eufora loan buyout efforts

Despite this incomplete assortment of Berard texts about buying the loan with the help of Kenner, Kaiser, and Gaarn -- Berard continued to lie to the EDNY as follows about "**NO KNOWLEDGE**" of the Eufora loans --

Q Do you remember during the course of that conference -- by the way you knew it was being recorded; is that correct?

A Yes.

Q You played a fairly active role in asking questions?

A I would say so, yes.

Q And one of the questions that came up was the question of the Eufora loan that we talked about, correct?

A I'm not familiar with the Eufora loan, no.

Now -- NOT only does Berard deny his knowledge of taking over the loan from Eufora -- **BUT to contradict the buyout efforts** -- Berard confirms his control of the communication with all of the investors via text -- without Kenner...

See R33 618 -- Berard confirms his control of the communication with all of the investors

Thus -- when Constantine accused Kenner of being the "**puppet master**" on the Home Depot recording related to the Eufora investigation and pending litigation -- **Constantine WAS WRONG!**

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Kenner - Recross/Miskiewicz

5108

1 Q. And also his indication to you that he was well aware
2 that you were -- or, in his opinion, well aware that you
3 were in fact, as he put it, the puppet master of that
4 lawsuit.
5 Do you recall those statements and the questions
6 that Mr. LaRusso asked you about the Home Depot tape?
7 A. I do recall Mr. Constantine's comments referencing me
8 as the puppet master.
9 I do not recall, as I sit here today,
10 Mr. LaRusso's questions related to that. I apologize.

And Komatiredy went on to mislead the jury – knowing full well that ***Attorney Stolper with his right-hand-guy – Berard*** – were orchestrating the loan buyout efforts (*that the government prepped at least one-half of their alleged victims to deceitfully claim they had no knowledge of*).

See R33 619 -- Komatiredy defrauds the jury during rebuttal summation

Kenner gave testimony on DIRECT that gave *confirmation of Eufora loan buy out efforts & and knowledge* by Berard, McKee, Michael Peca, etcetera...

See R33 620 -- Kenner DIRECT and confirm of Berard, Michael Peca and McKee EDNY LIES about Eufora loan buyout efforts

Then Komatiredy helps Kristen Peca confirm the government's false theory (*according to the government's prosecution script*) that in 2008 – Peca should have been told about the patents being pledged for the Neptune loan before acquiring Constantine's private Eufora shares...and is "**led**" by the government in her pre-programmed responses.

See R33 621 -- Kristen Peca gives false Eufora patent testimony – while the court STOPS the defense attempts to refute the false claims

The government asked a series of leading questions to Kristen Peca and a few other witnesses regarding false information (*and no foundational evidence to support the erroneous theory*) about the patents being pledged when they made their 2008 investments in Eufora -- **BUT** -- during cross examination of Kristen Peca on the same foundationless and misleading issue – the defense attorneys are "**stopped**" from confronting the government prosecution lies.

The REAL evidence proves the fact that the patents were ***NOT*** pledged as part of the agreement with Neptune until February 2009 – which the government clearly was aware of...***but ignored the facts to create their prosecution theory...again...***

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Again – Berard – who testified at EDNY trial ***denied*** any knowledge of the loan buy out – which was another fraudulently led government prosecution theory – which had to include “***coaching***” of the witnesses (*from the prosecutions table and represented by Constantine’s attorneys to the court*). Specifically -- Berard and Kaiser led the loan buyout efforts – with Gaarn. Considering so many of the investors with knowledge of the loan buyout efforts denied all knowledge of the events – it could not be a coincidence – rather fully ***SUBORNED PERJURY***.

See R33 055a -- Feb 2009 Eufora Operating Agreement with Gaarn & Constantine ownership

The following texts (*not 100% inclusive*) continue to resonate with Berard’s effort to lead the buy out of the Eufora loan and communicate with all of the Eufora investors (*without Kenner*).

See R33 618 -- Berard confirms his control of the communication with all of the investors

The simple fact that Berard DENIED knowledge of the Eufora loan buyout -- coupled with his overwhelming communication with all of the investors – confirms that his concerted efforts with FBI Agent Galoto, Kaiser and the government’s prosecution team could only be another fabricated effort to mislead the court and the jury!

Berard confirmed his ongoing conversations with the other Eufora investors about “buying the loan” and “f*cking Constantine” over it...

See R33 622 -- Berard confirmed his ongoing conversations with the other Eufora investors about “buying the loan” and “f*cking Constantine” over it

CLEARLY Berard LIED to the EDNY about his knowledge of the loan buyout...

Berard also confirmed via text with Kenner that Gaarn was on the Stolper-led conference call re -- loan buy out.

See R33 623 -- Berard confirms Gaarn loan knowledge re – Eufora investigator’s conference call

Berard also confirmed that Kenner had not been speaking directly (*other than conference calls*) with Attorney Stolper – by sending Stolper’s phone number to Kenner on July 7th, 2010 (*approximately 4 months after the investigation with Stolper, Gentry, Gaarn, Kaiser and Berard began*) – ***THUS – Kenner was not the “puppet master” as the government claimed (thru Constantine’s misrepresentations – while trying to get Kenner to stop the pending Eufora litigation against him)--***

14434	+14015246929 Bryan Berard*	7/7/2010 11:24:01 PM(UTC+0)	Read	<u>Maybe u shld give michael a call</u>	
14435	+14015246929 Bryan Berard*	7/7/2010 11:25:16	Read	<u>Michael 917 626 1175</u>	

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		PM(UTC+0)			
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Berard confirms leading the effort to get the investor signatures for the litigation with Eufora (*not Kenner-led – as Constantine claimed on the Home Depot tape*) –

144 49	+140152 46929 Bryan Berard*	7/8/2010 5:50:42 PM(UTC +0)	Rea d	Yeah. He's been keeping him up to date so we shld b good there. We shld get me wools devo peca turner rucc marchment muzz rem and Mattis signature 1st. Then the other guys will follow.	
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In August 2010 – Berard confirms that he appreciated what Kenner had been doing for him to fight nonstop “**forever**” – after experiencing his own short-term efforts related to the Eufora investigation –

15 59 7	+140152 46929 Bryan Berard*	8/17/201 0 3:21:12 AM(UT C+0)	Rea d	I'm tired of hearing abt it and <u>I know u gotta b exhausted. U did What u cld and uve been trying and dealing wth it long enough.</u> Time to go on our own and get things done. All good Karma. <u>Uve done enough. Plus we got Lanie on our side so good stuff haha</u>	
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These texts are a year and a half after Berard told the EDNY that he no longer found Kenner to be legit – once his LOC was seized while in Russia (*all proven lies*).

This is the same **Lanie** Donlan who testified in EDNY that she witnessed Kenner sign about 20 signatures on a bank document in 2005 – which has never been produced by the government.

This was a *government-contrived fraud* to “**enhance**” the FORGERY claims about the two (2) Constantine Hawai'i consulting deals – despite Manfredi's knowledge of the payments to Constantine (*as told in his 2010 FBI proffer to Galioto*).

See R33 2006 -- 3500-CM-2-r

And again in 2010 – Berard confirms mutual frustration with the investors –

16 95 1	+140152 46929 Bryan Berard*	10/7/201 0 11:29:07 PM(UTC +0)	Rea d	Same wth mexico too. Uve put up wth enough bullshit over the years. Try get them there \$ back and wash ur hands wth all these retards.	
16 95 2	+140152 46929 Bryan Berard*	10/7/201 0 11:29:18 PM(UTC +0)	Rea d	And I mean all of them	

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Still in February 2011 – **6 months after Berard testified in the EDNY that he cut ties with Kenner** – Berard is commiserating with Kenner about all the acrimony (*thus no conspiracy*) but still anxious to do business with Kenner – right up until the time in Spring 2011 when Kaiser and Berard flew to México and met with Jowdy and his attorneys...and received high-paying job offers, which they accepted.

199 66	+1401524 6929 Bryan Berard*	2/16/2011 7:36:42 PM(UTC +0)	Rea d	I HEAR THAT. <u>Don't know how uve done this for this long. I don't know how much longer I can.</u>	
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Berard still believes in Kenner and (*Timmy*) Gaarn in February 2011:

100 27	+14015 246929 Bryan Berard*	2/22/2011 7:18:59 PM(UTC+0)	Rea d	<u>Tell Timmy to call me when he can. Need to set him up wth Mark (sister friend) cld b some help in China. Make us some \$</u>	
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Then – Gaarn went on to lie to the EDNY about his loan knowledge despite efforts to secure \$2mm for the group.

See R33 624 -- Gaarn LIES to the EDNY about Eufora loan buyout knowledge

Ultimately -- despite the Gaarn references by Berard as being instrumental in the loan buyout communication with Stolper – Gaarn had also informed Kenner that he thought he had raised \$2mm for the entire loan buyout – unrelated to Kenner &/or the other investors.

This clearly takes Gaarn out of the role as a **puppet** of Kenner's as he proclaimed multiple times to the EDNY (*corroborated by the government proffers thru rebuttal summation*) and returns him to the leadership role he carried.

- Please note that Gaarn was the person – without Kenner &/or others – who initiated the communication and hiring of Stolper (*along with his two investigators – Rudy Giuliani CEO, Eric Hatzimemos and Ex-CIA agent, Oliver Libby – no lightweights*)...

See R33 625 -- Gaarn LIED to the EDNY about his knowledge of the loan buyout

CLEARLY Gaarn LIED to the EDNY about his knowledge of the loan buyout...

AND

CLEARLY Gaarn LIED about -- Never doing anything for Eufora without Kenner "telling him what to do"...

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Prosecutorial Misconduct for Rule 33**Michiewicz/Komatireddy – FAKE LOANS & Loan document FAKE –**

As an unscrupulous and injurious tactic – AUSA Michiewicz chose to harass Kenner about simply being a “*liar*” in front of the jury – placing his personal views and misguided feelings as testimony to impact the jury without any relevant evidence in question...

18	Q. I'm confused with all due respect in sum and summary	
19	-- I will do this as delicately as possible --	
20	MR. HALEY: I object to the form, Judge.	
21	THE COURT: Sustained. No comments. Ask	
22	questions.	
23	MR. HALEY: Thank you.	
24	Q. Aren't you just making all of this up as you sit	
25	there?	
		5065
1	A. No, sir.	
2	Q. Aren't you lying about these documents, your	
3	interactions with the people who relied upon you to take	
4	care of their money? Aren't you just lying about	
5	everything?	
6	A. No, sir.	
7	Q. Are you lying about even being summoned to the grand	
8	jury and then dropped like a hot potato?	
9	MR. HALEY: Now I will object, your Honor.	
10	THE COURT: Sustained.	
11	MR. HALEY: Thank you.	
12	Q. Aren't you lying about being summoned to the grand	
13	jury and then the FBI deciding they were going to favor	
14	Mr. Jowdy in Mexico over you. Aren't you lying about	
15	that?	
16	MR. HALEY: Judge, I object.	
17	THE COURT: Sustained.	

All of the proof that was entered during the trial 100% supported Kenner's position – NOT the government's attempts to slander Kenner's integrity...about loaning money to Jowdy unknown to the Hawai'i investors...***with proof to follow.***

In fact – and as a stunning turn of events – despite the government grandstanding that the “**LOANS ARE FAKE**”, Kenner also allegedly lied about the Jowdy Grand Jury subpoena being issued to him and rescinded (*but later proven to be true with the actual letters from*

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Michiewicz's own EDNY office) and going so far to calling Kenner a "**LIAR**" about the loans and other known truths.

SHOCKINGLY -- during the forfeiture hearing -- IRS Agent Wayne confirmed that Jowdy and his attorney and Kenner antagonist (*Tom Harvey*) prepared an accounting of the funds transferred from Hawai'i to Jowdy (& *Jowdy controlled entities*) -- and what did Agent Wayne confirm?

Agent Wayne CONFIRMED that Jowdy & Jowdy's own attorney, Tom Harvey, called 100% of the funds from Hawai'i "LOANS"!

See R33 001 -- FORF-44

Specifically -- this also contradicts Harvey's threats to Kenner in 2009 that led to Kenner's EXTORTION lawsuit versus Jowdy and Harvey in CA...but now in 2016 -- after the Kenner trial (*fully assisted by Jowdy, Harvey, Berard and Kaiser*) -- Jowdy and Harvey confirm the "loans" Jowdy received...

R33 027 -- Harvey EXTORTION THREATS to Kenner (April 2009)

Komatireddy went on to LIE -- again -- and state that Kenner testified during trial that the loans to Jowdy were the reason that Kenner received his equity in Cabo.

NOT TRUE AT ALL as evidence proved in the forfeiture hearings

That testimony NEVER occurred -- It was just another Government LIE.

See R33 626 -- Komatireddy LIE about Kenner México equity

The government (*and unquestionably Galioto*) was clearly cognizant of Jowdy's multiple January 2010 deposition confessions (*above*) about the **UNPAID** loans (*and no plans six (6) years later in 2010 to repay them*) -- as well as the Jowdy proffer to the FBI (*with Galioto present*) in March 2010 confirming the loans from Hawai'i (*Little Isle 4 and Ula Makika*).

Agent Galioto was present for the Jowdy confessions despite sitting idly by in 2015 when the government made knowingly false and misleading claims in front of the jury that Kenner had to deny...

From the Komatireddy opening remarks --

18 The defendants tell the investors that a guy in
19 Mexico named Ken Jowdy, stole their money and ran away

- o All of the government's evidence pre-trial (*including the Jowdy 2010 deposition confessions and the 2010 FBI proffer confessions to Galioto*) confirmed that Jowdy ***did steal*** the Kenner and Kenner investor funds (*and run away*) -- including the ***R33 001 forfeiture-44*** post trial government submission...

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Jowdy received the funds from the Hawai'i loans and multiple Kenner and Kenner investor loans from 2004 thru 2006 and **NEVER** repaid a dime after he received the unconstrained \$125mm loan from Lehman Brothers in March 2006.

- In fact – Jowdy continued – per the terms of the 2004 Hawai'i loan agreement – to repay Kenner and his Hawai'i investors up until 2 days before the funding of the Lehman Brothers loan while working to secure the final signatures from Kenner and the other Kenner investors. Jowdy's seven (7) payments in the final 6-weeks before the Lehman Brothers funding totaled \$360,000...

See R33 627 -- Jowdy Hawai'i loan repayments until 2-days before Lehman Brothers \$125mm loan closed

Jowdy's consistent repayment of loaned funds never raised a "**red flag**" as to Jowdy's long-term and bigger picture frauds v. Kenner and Kenner investors. The total repayments from Jowdy to the Hawai'i loans during the 18-months totaled approximately \$2mm.

After the March 2006 closing of the Lehman Brothers \$125mm loan, Jowdy NEVER repaid another dime to ANYONE for any of the projects that he personally borrowed money for and confessed to – despite the government's choice to IGNORE the truths and slander Kenner at trial thru misleading theories from Opening remarks thru rebuttal summation.

In hindsight – these small repayment amounts were nothing more than a con-man's inducements to sign off on the remainder of the Lehman Brothers closing documents by Kenner and the Kenner investors – all the while Kenner and his investors expected the funds to be paid back at the closing – only days later.

Since they were not – and Jowdy had unlimited access to funds from that point forward thru the Lehman Brothers loan (*for starters*) – there is nothing else to conclude legally other than ***Jowdy STOLE the money with no intent to repay Kenner and the Kenner investors – considering his negligent and ruthless actions confirmed it.***

During the forfeiture hearings – Kenner produced a February 23, 2006 email between Kenner, Najam and Jowdy which clearly acknowledges that Kenner was expecting to receive the UNPAID Jowdy loan balances at the time of the closing and thus had no problem with the temporary Jowdy control in the original Lehman Brothers closing documents.

See R33 628 -- Kenner confirms with Jowdy and Najam pre-Lehman Brothers closing that the loans would be repaid 'in full'

Not only did Kenner, Najam and Jowdy have open communication on February 23 -- *only 4 days before the original February 27, 2006 closing date* -- about "***all funds will be paid***" – but Najam was one of the authors of the Little Isle 4 disclosure letter five (5) months later – so Najam clearly knew about the loans to Jowdy and the lack of payments at the time.

- ***NOTHING was CONCEALED by Kenner from Najam &/or Hawai'i attorney Markowitz...related to the drafting of the letter – especially considering the fact that Markowitz was also the Cabo closing attorney for Najam and Jowdy in March 2006.***

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In fact – Najam was involved in the 2005 Centrum loan to Hawai'i – *acting as its attorney*. The closing was on or about July 14, 2005. Kenner was not even cc'd on the original closing email from the Little Isle 4 attorneys at Carlsmith Ball (*Hawaii's largest and most prestigious law firm*) – ONLY Manfredi and Najam.

See R33 2002 -- Manfredi, Jowdy, Najam finish Centrum loan with Hawaii attorneys

Despite Manfredi's specific involvement with all of the closing attorneys for the Centrum loan (*and the successful Urban Expansion and Lehman Brothers loans*) – Manfredi lied to the EDNY about the Kenner guarantees. There would be no benefit to Kenner to conceal a personal guarantee on loans from anyone -- so no other partners would be subject to collection issues in the future. Why would the government have Manfredi testify that he was not aware other than to discredit Kenner's known contribution and significant guarantees to the project?

See R33 2008 -- Manfredi lies about Kenner personal guarantee knowledge

Kenner's personal guarantee with the \$3mm loan was confirmed in the EDNY and in the Najam emails to the necessary parties the days before the closing in July 2005.

See R33 2003 -- Najam and Jowdy review final Centrum docs with no issues

Centrum lending partner – Bruce Berreth – confirmed to the EDNY that Kenner was personally signed as a guarantor for the \$3mm loan and would be responsible if there was a default – including but not limited to recovering the loaned funds (*that Jowdy and Manfredi negotiated*) from Jowdy.

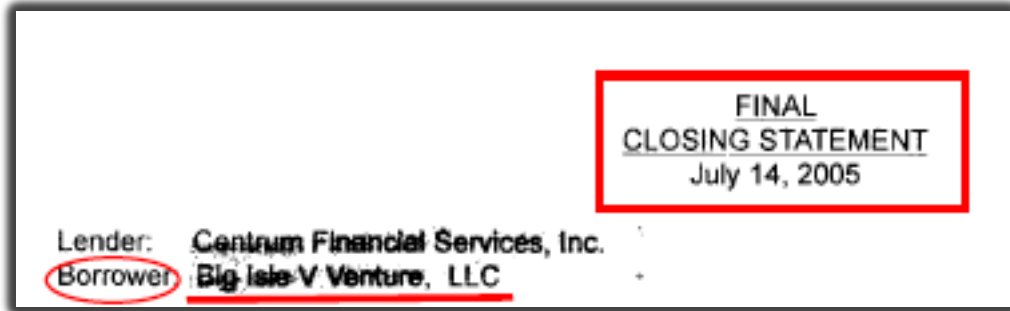
See R33 629 -- Centrum lending partner – Bruce Berreth – confirmed to the EDNY that Kenner was personal signed as a guarantor for the \$3mm loan

Throughout the EDNY trial – the government prejudiced Kenner related to the July 2006 Little Isle 4 disclosure letter – ***intentionally and improperly*** alleging that it should have contained information about the Jowdy loans – disregarding the obvious fact that the letter was written by Hawai'i attorneys Najam and Markowitz for the joint venture to "**explain the transaction**" – which Najam confirmed in the 2009 arbitration – NOT the entire summation of the Little Isle 4 project financials.

See R33 498 -- 2009 Nolan arbitration – Najam confirms authoring the Little Isle 4 disclosure letter

The Centrum closing between ***Centrum Financial Services and Big Isle V Ventures, LLC*** occurred on or about July 14, 2005 – after Kenner agreed to personally guarantee the \$3mm loan and personally guarantee the environmental indemnity – both significant personal risks to Kenner that no other members were forced to take.

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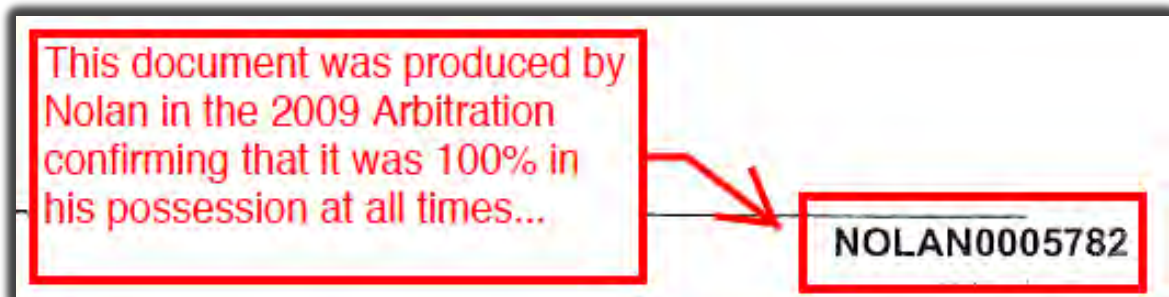


The closing documents for the Centrum loan required the Operating Agreement for Big Isle V Ventures (*the borrower of the \$3mm loan*).

Najam – acting as the attorney on the Centrum loan – forwarded the July 4, 2005 operating agreement to Centrum –which clearly confirmed – “***at all times, the Company, through its Managing Member (Philip A. Kenner) reserves the right to borrow, lend or invest on behalf of the Company***” ...

See R33 2007 -- EXH_NO_082 - Big Isle V Operating Agreement - with lending provision and Special Projects section specifically referring to the Centrum newly borrowed funds

The July 4, 2005 Operating Agreement was produced with the ***specific borrowing and lending language*** for Centrum before the July 14, 2005 closing and distributed to all of the Little Isle 4 members -- produced by Nolan (*see bate stamp*) not Kenner -- for the 2009 Arbitration -- ***thus fully disclosed...***



Kenner was also the Managing Member of Little Isle 4 – thus Kenner was authorized to sign on behalf of the Little Isle 4 membership. Little Isle 4 owned 50% of Big Isle V Ventures (*and the underlying 1500 acres of Hawai'i real estate*). Kenner owned 35% of Big Isle V. Kenner controlled 85% of the LLC and was its Managing Member. Manfredi and Kaiser controlled the other 15% -- with Manfredi specifically handling the closing process with Centrum.

The July 2005 Big Isle V operating agreement was forwarded to all of the Little Isle 4 members – including Nolan (*see above*). The 2009 Nolan BATE STAMP (*not from Kenner*) confirms Nolan had a copy of the Big Isle 5 operating agreement as evidence in the 2009 arbitration – again proving nothing was concealed from the Little Isle 4 investors – *regardless of whether or not they read it.*

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Notwithstanding all of the knowledge of the Jowdy loans by Najam in 2005 – Jowdy actually negotiated the final \$1.5mm loan amount with Manfredi ***the day before the closing*** – and let Kenner know the final amount...

See R33 2001 -- Najam, Jowdy and Manfredi negotiating the loan to Jowdy

CLEARLY – ***nothing was being CONCEALED by Kenner*** – specifically with Manfredi having direct and unfettered communication with Jowdy and Najam the day of the loan.

Despite the Kenner full disclosures – the government still slandered Kenner thru summation.

See R33 630 -- Michiewicz badgers Kenner about arbitrage he knows is inaccurate in an attempt to discredit Kenner and allege no personal Kenner "risk"

See R33 631 -- The government fraudulently claims in summation – again – that the Centrum loan cost the investors 18% to mislead the jury

With the 15% Jowdy loan – Kenner was able to secure a 3% positive arbitrage for the funds that were already invested in the Hono'apo site – thus lowering the effective cost of capital to 3% on the Hono'apo -- instead of the maliciously self-serving government proffer of an antagonistic 18%.

It was beyond prejudicial to Kenner in front of a jury who could never have comprehended the government's false representations of the banking deal – thus accepting the deceptive proffer on face value as true and accurate.

Then – Michiewicz decided to ***"flat-out"*** lie to the jury during summation about Kenner using the Centrum funds that were loaned to Ken Jowdy to acquire Kenner's 39% equity in the Cabo project. The government – *at all times* – had the Kenner testimony from the Nolan arbitration and the underlying documents supporting 100% of the funds that were included in Kenner Diamanté Cabo capital account (*submitted again in the forfeiture hearings by Kenner*).

This inflammatory statement was made to the jury to incite emotion about the ongoing Hawai'i loans to Jowdy (*alleged throughout the EDNY to be a scam by Kenner and stolen – until the government submitted FORFEITURE-44 during their forfeiture case recanting and refuting all of their trial proffers and prejudicial and foundationless statements*). The government attempted to ***"shoe-horn"*** deceptiveness into their foundationless prosecution theories. Michiewicz presented *no testimony* or evidence to support this libelous statement throughout the EDNY trial – further prejudicing Kenner without real evidence.

See R33 632 -- Michiewicz lies during summation about Kenner Cabo equity source of funds

Although Galimoto and Wayne were 100% aware (*see Jowdy proffer below*) – they both sat idly by while Michiewicz prejudiced Kenner...

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CRITICAL –

See R33 635 -- Manfredi deposition in March 2009 confirming NO KNOWLEDGE of Centrum loan – or Kaiser's \$1mm friends & family investment/loan -- despite LIES about full knowledge during EDNY (6 years later)

At all times – the government was aware of the Kenner Cabo equity source...

See R33 633 -- Lehtinen Baja Ventures BACK UP agreement

See R33 634 -- Stumpel Baja Ventures BACK UP agreement

In fact – Jowdy independently confirmed Kenner's Cabo equity thru proffer on May 6, 2014 (6+ months after Kenner was indicted and detained) directly to FBI agent Galioto and IRS Agent Wayne with Tom Harvey present –

KENNER borrowed money from JERE LEHTINEN and JOZEF STUMPLE for the down payment for the Cabo property. At the closing in March 2006, KENNER was listed as the sole owner of BAJA VENTURES 2006(BV 2006), which had 39% of the Diamante Cabo project.

Also -- Jowdy clearly admitted to the loans from Hawai'i in his January 2010 CA DEPOSITION THAT WAS SENT TO THE FBI AND AGENT Galioto In February 2010 – as evidenced by the email traffic between Kenner and Gonchar – and followed-up by Galioto's February 2010 call to Kenner commanding Kenner to STOP sending information that was not specifically requested to him &/or any other agent of the FBI or DOJ.

See R33 597 -- Gonchar inquires about Galioto receiving the Jowdy 2-day deposition confessions

See R33 599 -- Gonchar inquired a 2nd time about Galioto receiving the Jowdy confessions

Please note that Gonchar proffered with agent Galioto in February 2010 and confirmed that Kenner and Jowdy independently explained to him about the loans from the Hawai'i project (involving Gonchar) were being sent to México.

See R33 013 -- Gonchar February 2009 FBI proffer

See R33 598 -- Gonchar confirmed to the FBI that he knew of Jowdy loans from Kenner and Jowdy independently

Ultimately – Komatireddy decided to proffer the final fraud about the Centrum loan during rebuttal summation with the Kenner defense unable to refute the myriad of pre-planned lies to the jury.

See R33 644 -- Komatireddy proffered the final fraud about the Centrum loan during rebuttal summation

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Amazingly – the government thru Komatireddy's summation grossly skewed the facts that were never in evidence other than thru fabricated proffers.

Komatireddy and the government IGNORED the following truths known to the government long before the 2015 trial –

- Manfredi and Najam handled the Centrum loan closing – other than Kenner signing the documents.
- Manfredi negotiated the final \$1.5mm loan with Jowdy (*evidenced by their phone call – documented in the Kenner-Manfredi email the day before the Centrum closing – further transparency*).
- Jowdy and Najam confirmed via email (*in evidence*) that the loan should only be outstanding for about 30 days (*as Kenner testified to in the forfeiture hearings and was attacked by the government as false*).

CLEARLY – Kenner did not use the \$1.5mm additional loan to Jowdy to receive any equity in Cabo as the government relentlessly proffered. Kenner NEVER put off Lehman Brothers to delay the deal for another year.

See R33 900 -- Manfredi-Lehman deal 2005 "too egregious"

Please note that Kaiser's "***friends & family***" \$1mm loan/investment occurred in the same month (*August 2005*) that Manfredi confirmed to another hard-money lender that the egregious Lehman Brothers loan was cancelled "***by us***".

- Thus since Kaiser and Manfredi were best friends – Manfredi clearly communicated with Kaiser about the cancellation of the Lehman Brothers loan and the specific reasons for it.

Then in the same month (*August 2005*) -- Kaiser decided to approach his "***friends & family***" and request a \$1mm loan/investment – with full knowledge that some of the funds (*ultimately \$135,000 of the \$1mm*) would be sent to Jowdy in México as part of the 2004 Hawai'i loan agreement – despite his lies to the EDNY.

See R33 637 -- 2009 Kaiser confirms loans to Jowdy and beneficial purpose for Little Isle 4

Thus – with Manfredi's own words in 2005 -- while explaining to another lender that Lehman Brothers' deal was "***too egregious***" and it was cancelled "***by us***" (*not Kenner*) – then after Kenner paid \$451,080 in late fees over a 7 week period (*which certainly would have been avoided if the cancellation of the Lehman Brothers 2005 loan was a set-up to introduce the Urban Expansion loan*) knowing with a crystal ball – that Lehman Brothers would fund the much more complex Hawai'i development deal a year later (*of \$105mm instead of \$4mm for Waikapuna*). ***It is completely illogical...***

It is preposterous to believe that Manfredi, Kenner, Kaiser and the Hawai'i partners "***cancelled the too egregious Lehman Brothers loan***" related to the development of Waikapuna (*and the pending \$4.2mm closing*) in August 2005 but knew that Lehman

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Brothers would be interested a year later in closing a \$105mm loan with Kenner for all of the parcels under Kenner's control – in an infinitely more complex deal. *It is absurd...and deceitfully malicious.*

Ironically – when Kenner, Manfredi, Kaiser and the Hawai'i partners cancelled the **egregious** Lehman Brothers 2005 loan – there was no ongoing working relationship with Lehman Brothers in México &/or Hawai'i until months later when Lehman Brothers began trying to fund the Diamanté Cabo deal – *through a 3rd party reintroduction*. Lehman Brothers created no term sheet for the Cabo project until January 2006 -- over 5 months later (*in EDNY evidence – provided by Jowdy and Attorney Harvey during pre-trial*).

Manfredi continued to lie for the government since the Centrum loan was closed in July 2005 – **after Manfredi negotiated with Jowdy directly (thus no concealment and total transparency – see evidence above)** – and a month before cancelling the Lehman Brothers “**egregious**” loan (*in Manfredi's words – not Kenner's*).

The Centrum loan was originally based on the need to create the initial infrastructure on the Hono'apo site (*which was being delayed by the Hawai'i planning commission during parcel consolidation and re-subdivision meetings by director Chris Yuen – managed by Manfredi and the Carlsmith Ball Hawai'i attorneys for Little Isle 4*) – **not to fund the Waikapuna purchase**.

The short-term loan (*30 days expectation in Jowdy's words to Najam – below – and attacked as a lie by the government in the Kenner forfeiture CROSS examination*) was received and used for the ongoing 15% Jowdy loan in order to defray some of the lending costs and create a positive lending arbitrage until the need for the infrastructure expenses – as confirmed by Kaiser in his 2009 arbitration testimony.

See R33 637 -- Kaiser confirms loans to Jowdy and beneficial purpose for Little Isle 4

See R33 636 -- JOWDY 30-DAY Centrum repay

The funding efforts with Lehman Brothers (*separate from Centrum and the Hono'apo parcel development*) were established to close the Waikapuna parcel and collectively work to separately develop the Waikapuna (*oceanfront*) site with Little Isle 4. Each deal was separate and unique in 2005 and had no relevance to the other – creatively cross-contaminated by the government and their PERJURIOUS witnesses – following the thought-out and calculated government prosecution game plan.

See R33 2001 -- Najam, Jowdy and Manfredi negotiating the loan to Jowdy

Manfredi was the lead contact with Lehman Brothers (*as all of the EDNY evidence confirms*) through the date of the Hawai'i management decision to terminate the “**egregious**” Lehman Brothers deal for Waikapuna – and certainly not a deal established for leveraging it to acquire another parcel (*Waikapuna*) that Manfredi and Kenner were simultaneously negotiating to close in August 2005 and develop with Lehman Brothers as a development partner.

Manfredi (*Kaiser's close friend -- as Kaiser testified to in the EDNY*) fabricated a story for the EDNY about cross-collateralizing the multiple parcels – which is **OUTRAGEOUS** since that

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would have terminated the opportunity to develop the 1500-acre Honu'apo subdivision while pledged – thus choking off any repayment cash flow for the underlying loans. *It was pure development rhetoric and nonsense.*

See R33 638 -- Manfredi's cross collateral LIES

The Manfredi testimony about leveraging Hono'apo to purchase Waikapuna is ridiculous for several reasons.

One – the Centrum loan funded in July 2005.

Two – the Lehman Brothers loan was set to close for the Waikapuna parcel one month later (*August 2005*) – so if the Hono'apo loan were supposed to be leverage to close the Waikapuna parcel (*one month later – not BEFORE*) – then the funds would have been available and not created “**consternation**” with the Waikapuna seller (*per Manfredi's perjured testimony*).

- It was outrageous testimony that the jury could never have reconciled the real timelines – but the government clearly knew they were eliciting false testimony from Manfredi – since the order of events (*again*) could not have taken place in reality...

Three – there is no emails in evidence or elsewhere from Manfredi or Kaiser asking Kenner why the Waikapuna parcel did not close with the alleged “**leveraged Hono'apo funds**” – thus another **SUBORNED PERJURY**.

- The only email is Manfredi's own “**egregious**” email does not even include Kenner. Kenner discovered the email after January 2010 when Jowdry produced it in his CA evidence production to Ronald Richards and the México and Hawai'i plaintiffs.

Also – to contradict everything Manfredi just claimed about the Waikapuna deal (*leveraged purchase with Honu'apo proceeds from Centrum and his lack of knowledge*) – Manfredi told the EDNY that the Urban Expansion loan (*which occurred 3 months after the Centrum closing and 2 months after the Lehman Brothers loan was cancelled according to Manfredi for being too “egregious”*) – Manfredi alleges that the Urban Expansion loan was agreed to even before the Centrum loan. It was simply nonsensical at best and slanderously prejudicial to Kenner (*and fully supportive of the conspiratorial claims by the government*).

Manfredi's testimony is so baffling that neither the court &/or the jury could have deciphered anything EXCEPT that there was some scam that Kenner created (*with co-conspirator Constantine*) by concealing all of the Hawai'i dealings from everyone – specifically including Manfredi (*the main contact to the Hawai'i attorneys at Carlsmith Ball, the land contracts, the local contractors and every necessary detail*) – and creating an unnecessary loan after paying \$451,080 in late fees (*with no benefit*) – just so Kenner could create another loan with Constantine (*Urban Expansion – months later*) and hope that Lehman Brothers (*who was just terminated in August 2005*) would re-renter the picture (*with Kenner's crystal ball*) and close an infinitely larger (**by \$100mm**) and more complex deal one year later – and everything would all work out to Constantine's benefit.

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This is all notwithstanding that facts in the Lehman Brothers closing documents which were presented at EDNY trial that the money Constantine owed Kenner (*after the August 2006 Lehman Brothers closing*) from previous deals were disclosed (*much the same as the full disclosure in the closing documents for Kenner to also deal with Centrum in the future on a CA Beachfront hotel Kenner was trying to purchase for \$25mm*).

Manfredi EDNY testimony continued with reference to the Waikapuna loan with Urban Expansion.

See R33 639 -- Manfredi lies that the Urban Expansion loan was ready before the Centrum loan

Manfredi went on to also lie about ***"take out other investors"*** due to the Lehman Brothers closing. Not one Kenner investor was ***"taken out"*** because of the Lehman Brothers funding – NOT ONE!

See R33 640 -- Manfredi lies about Lehman Brothers buying out investors

Now – in the initial meeting that Kaiser described between Kenner, Manfredi and himself – the government asked Kaiser to explain the August 2001 Money Magazine cover story about Kenner (*allegedly when Kenner claimed to Kaiser that Kenner was worth \$500mm*). Kaiser claimed that Kenner showed the two of them (*with Manfredi*) the actual magazine.

See R33 641 -- Kaiser lies about the Kenner MONEY magazine article – contradicting Manfredi's testimony at EDNY

But – when Manfredi was asked about the Money Magazine article – Manfredi confirmed that he saw it via a PDF that was emailed to him. Again – the premeditated stories between the government and their collective witnesses fail to corroborate their own accusatory underpinnings.

See R33 642 -- Manfredi contradicts Kaiser's MONEY Magazine story LIES

Manfredi also attempted to steer clear from the ***"hornet's-nest"*** of Kaiser frauds related to ***"kicking Manfredi out"*** of the original Sag Harbor property – and claims (*despite signing documents as a 25% partner and Tesoriero's FBI proffer*) he did not remember anything about the deal or being involved.

See R33 643 -- Manfredi LIES about involvement in Sag Harbor deal – before the LedBetter purchase

Manfredi contradicted his own-signed North Point (*Sag Harbor*) operating agreement by claiming he wasn't aware of his participation &/or being kicked-out by Kaiser.

See R33 2004 -- North Point Property SIGNED Small business form (Manfredi -- kicked out a year later by Kaiser)

Manfredi contradicted his Sag Harbor partner's (*Tesoriero*) FBI proffer, which occurred after the Kenner Indictment, as well.

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See R33 2005 -- 3500-VT-1-r

And -- in a last ditch effort to keep Kaiser's hands "**clean**" from the vindictive buyout of Manfredi after their terse dealings with their respective Hawai'i negotiations – Manfredi astonishingly suggests –

Q. You don't have a recollection.
 Do you know, as you sit here today, whatever happened to your 25 percent ownership interest in North Point Properties, Inc.?

A. I would say I abandoned it.

Q. Thank you, Mr. Manfredi.

MR. HALEY: No further questions.

- In October 2006 – the property appraised for \$1,500,000. Manfredi misled the EDNY to believe that he simply abandoned a \$375,000 equity position to avoid further questions about "being kicked out" as his partner – Tesoriero -- told the FBI in 2014.

Notwithstanding Manfredi's knowledge and negotiations with all of the Hawai'i lenders and the Jowdy 2005 loan from the Centrum proceeds – Jowdy actually confirmed to the FBI in March 2010 that he borrowed the "loans" from "Little Isle 4" and "Ula Makika" (Hawai'i) – see below.

These confessions by Jowdy were contradictory to his AZ case defense of "**NO LOANS**" which was dismissed only three (3) months earlier (*December 2009*). Galioto has been 100% aware of the Jowdy AZ defense position and the frauds on the AZ court since Kenner initially proffered on July 24, 2009. That was Kenner's first disclosure to the FBI that Jowdy stole the approximate \$25mm of funds from Kenner and his investors – and had been claiming that the loaned funds were being denied by Jowdy (*in his 2008-09 AZ case defense*).

- Jowdy's March 2010 revelations and confessions about the "**LOANS FROM Hawai'i**" to Galioto (*and the other government people*) should have been the final straw to a Jowdy Indictment – as Kenner (*and Gonchar – February 2010 FBI proffer*) represented to Galioto without equivocation.

Despite the clear and convincing confessions from Jowdy **with Galioto present** at the March 2010 proffer – the government still claimed Kenner (*with Constantine*) made-up a story to the investors about Jowdy stealing their collective investments and loans – from opening remarks thru rebuttal summation. The government's moral compass was nothing short of irreversibly prejudicial – and not in the interest of real justice – and morally traded to "**seek convictions at all costs**".

See R33 646 -- Jowdy confirmed to the FBI that he stole investor funds and received loans from Hawai'i in March 2010 – and completely ignored by Galioto and the government in the prosecution of Kenner in 2015

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What else could Galimoto &/or the government think the Hawai'i money was (*other than loans to Jowdy*) at that point – since Jowdy (*who received the money*) **CONFIRMS the LOANS in March 2010?**

- Please note that that this 2010 proffer is **CONTRADICTING** to both Jowdy and Diamanté CFO, William Najam, ever-changing testimony in the 2009 Nolan arbitration in 2009 (*at the same time as Jowdy's 2008-09 NO LOANS defense in the Little Isle 4 versus Jowdy litigation*) – while testifying in a hostile and antagonistic position to Kenner –

See R33 647 -- Jowdy and Najam claim NO LOANS in 2009 Nolan arbitration

See R33 319 -- Peca September 2009 Jowdy loans email

Najam claimed to be the manager of the Books & records of the Jowdy entities who received over \$6mm in funds per Jowdy's request and direction – ***but not one dollar was ever recorded by Najam &/or any other entity under Jowdy's control as an investment...***

- Please note that Najam confirmed to the 2009 arbitration that ***Lehman Brothers was not interested in working with Kenner*** – so how could the government – with this information in hand – make the false representation to the EDNY in 2015 that Kenner purposely delayed the 2005 Lehman Brothers closing in order to bring the Urban Expansion loan to the Hawai'i deal – knowing all along that Lehman Brothers would return to the deal a year later (*and kick Kenner out*)? The Lehman Brothers lender was PISSED at Kenner for walking away from their “egregious” and pompous final deal (*changed at the 11th hour – trying to back Kenner an Manfredi into a corner with no other options*). This “*deal-to-steal*” technique was well known about Lehman Brothers.
- ***It was completely absurd and again prejudicial*...especially considering Najam's following testimony from 2009.**

See R33 648 -- Najam testified in 2009 -- Lehman Brothers not interested in working with Kenner

Now – ***the government also maliciously misled the jury*** into believing that the Joint Venture disclosure letter that all of the Hawai'i investors signed to approve the new deal with Lehman Brothers and a new JV partner – ***which was drafted to explain the deal by Hawai'i attorneys Najam and Markowitz*** – at the request of Lehman Brothers and the JV partner – ***thus under no circumstance*** was the JV letter supposed to list the *loans to Jowdy or other deal-irrelevant items* – which both Najam and Bhatti from Lehman Brothers were previously aware of.

See R33 649 -- Little Isle 4 JV authorization letter -- EXH_NO_047

See R33 650 -- Najam confirmed at 2009 Arbitration assisting in the drafting of the 2006 Hawai'i disclosure letter

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Najam, who was one of the authors of the letter (*along with Hawai'i attorney Larry Markowitz*), explained to the arbitration panel that the letter was not to explain all of the business of Little Isle 4 – but – the letter's sole intention was to **explain the Joint Venture**.

Disregarding this information – the government attacked Kenner multiple times accusing Kenner of leaving the Jowdy loan information out of the **Joint Venture** letter – further insinuating that Kenner **CONCEALED** that information from his clients.

- Please note that every one of Kenner's clients (*with the exception of Nolan – who lied to the 2009 arbitration and the 2015 EDNY jury about his basic LOC knowledge*) acknowledged in one or more legal proceedings that they were 100% aware of the Jowdy loans and approved them.
- Michael Peca and Turner Stevenson went so far in the 2011 SDNY Grand Jury to confirm they approved them “as a group” – despite Michael Peca's **CONTRADICTING** testimony four (4) years later at the EDNY trial...

See R33 612 -- Michael Peca NO RESPONSE to Northern Trust LOC comments et. al.

See R33 651 -- Stevenson SDNY Grand Jury testimony -- confirming group decision to lend Jowdy money from Hawai'i to México

See R33 652 -- Michael Peca confirmed a group decision to lend funds form Hawai'i to México to the SDNY Grand Jury

It should be noted that although Michael Peca told the SDNY Grand Jury that he was 100% aware of the loans to Jowdy – **only \$355,000 of the \$1,775,000** LOC proceeds were part of the loans to Jowdy. The remainders of the Michael Peca funds (*LOC advances – including the 11-day \$395,00 short-term loan **THAT WAS REPAYED by Kaiser***) were all used for land acquisition and other expenses of Little Isle 4 and Na'alehu Ventures 2006.

- Despite all of the pre-2015 admissions (*thru testimony and affidavits in EDNY evidence – except for Nolan*) – almost all of the funds utilized for the known loans to Jowdy were recovered by the alleged victims through settlement amounts testified to at the EDNY by Berard (\$300,000), Nolan (\$500,000) and Michael Peca (\$600,000).
- In fact for Berard, Nolan and Michael Peca – all of these recovered amounts exceeded the total amount of funds that originated in the LOCs (*although belonging to Little Isle 4 after the investment commitments*) and transferred to Jowdy as part of the 2004 Hawai'i loan agreement.

See R33 313 -- NT Extension of Credit \$900k - Berard-2

See R33 462 -- Nolan NT 2004 Extension of Credit

See R33 580a -- NT 2005 Peca Extension of Credit

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Michael Peca was asked in the 2015 EDNY on Cross-examination if he was truthful in the 2011 SDNY and confirms –

6 Q All right.
7 Well, at that point in time, sir, when you
8 testified before the grand jury in the Southern District
9 of New York, the answer that you gave to that question was
10 truthful, was it not?
11 A Yes, it was.

- Despite Michael Peca nonchalant yet well-defined testimony about the Hawai'i "**capital accounts**" to the SDNY Grand Jury (*and corroborative texts in EDNY evidence confirming Michael Peca's capital account knowledge for his complete LOC investment*) and his agreeable participation in the loans to Jowdy – Michael Peca further enriched the government's 2015 **NO KNOWLEDGE** theories by perjuring his EDNY testimony as follows –

11 Q Well, you were certainly aware that the line of
12 credit committed to Little Isle IV would be or did become
13 the source of a loan to Ken Jowdy with respect to a
14 project Ken Jowdy was developing in Baja Mexico, correct?
15 A Incorrect.

In fact – Michael Peca perjured himself to dispel another government theory that all of the information he received about Jowdy and the Jowdy problems (*loans*) came from Kenner – considering independent counsel in the AZ case (*Tom Baker*) and the CA case(s) (*Ronald Richards*) versus Jowdy represented Michael Peca informed him per his SDNY testimony.

See R33 654 -- Michael Peca confirmed to the SDNY he learned about Jowdy issues from other litigation – not Kenner

Despite Michael Peca's SDNY Grand Jury testimony – Michael Peca LIED again to the EDNY by telling the court only Kenner told him about the Jowdy loans (*which the government has now proven to be true through their **forfeiture-44** disclosure thru Agent Wayne during the forfeiture hearings*) – thus confirming all of Kenner's claims throughout the EDNY that the loans to Jowdy were real and not a cover-up as advocated incessantly by the government.

See R33 655 -- Michael Peca LIED to the EDNY about his only source of Jowdy loan info

And again under government-led PERJURY – Michael Peca told the EDNY on direct-examination that he never received a statement from Northern Trust about his LOC – and tried to confirm it during Cross-examination.

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See R33 656 -- Michael Peca confirms DIRECT exam perjury of no LOC statements or a request for statements

See R33 505 -- Peca notarized request to NT for Loan History Report

Received in the Northern Trust partially filled subpoena box -

See R33 582 -- NT 2-17-2006 LOC Loan Statement (Calgary address) - Peca

See R33 582a -- NT 2-2009 Peca LOC Loan Statement (Buffalo address)

This DIRECT testimony of Michael Peca is contradicted by the Northern Trust subpoena box (*which arrived at the end of the trial - unable to be used for government witness cross-examinations*), which included the February 2006 statement and February 2009 statements -- mailed to Michael Peca's different homes -- of the Michael Peca Northern Trust LOC.

It is not probable that those were the only two LOC statements (*mailed 3 years apart*) that existed for Michael Peca's account. Please note that other random LOC statements for the Northern Trust clients also arrived in the late trial subpoena documents from Northern Trust.

- In fact - someone (*Kenner or Peca*) had to inform Northern Trust Bank that Michael Peca had a new address in February 2006. *What was possibly CONCEALED?*

Please note that Michael Peca's Calgary, Alberta CANADA address is different than the statement Michael Peca signed only a few months earlier in late 2005 confirming his Getzville NY address ***as well as the \$1,600,000 LOC funds that had been disbursed*** by that time - CLEARLY knowing his funds were used within a few months of the opening of the line - ***confirming more perjury.***

See R33 657 -- Michael Peca signed 2005 NY address and confirmation of \$1,600,000 funds disbursed statement

Then -- Michael Peca also denies trying to recover the Northern Trust documents that were stolen by Kenner's former assistant, Myrick - despite the fact that not only did Michael Peca sign and notarize a request for Northern Trust Bank but he also did the same for Charles Schwab (*both after the LOC collateral seizure*) - so clearly Michael Peca *did make an effort* to receive new copies of all his statements with Kenner's help - ***NO CONCEALMENT AGAIN*** - only Michael Peca LIES...

19 Q. Well, after Phil Kenner, as you say, told you that
20 those records were stolen from his home, did you then make
21 efforts to request those records from Northern Trust?
22 Yes or no?
23 A. No.

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The following was the email request for Northern Trust documents from Kenner to Michael Peca – and ultimately filled by Northern Trust. Please note that the signed and notarized document was not in any of the Northern Trust subpoenaed records.

See R33 658 -- Michael Peca "efforts" to receive Northern Trust and Schwab statements after Myrick thefts from Kenner

Notwithstanding all of the government-led and suborned Michael Peca LIES at the EDNY trial – the government returned to their **NO LOANS** prosecution mandate (*full of Kenner concealment overtones*) – despite already knowing that Jowdy had confessed to the LOANS in 2010 and (*below*)...

SHOCKINGLY – Jowdy also confessed to the FBI that he used investor funds for personal expenses – BUT – Jowdy documented them as loans from his LLC -- Baja Development Corp.

- *IF this RIDICULOUS accounting trick worked – then stealing money from any company would be LEGAL...*
- *This is exactly what Kenner proffered to Galimoto on June 24, 2009 about and was IGNORED...*

In the 2011 SDNY Grand Jury – Michael Peca confirmed that the lack of accounting information was also a problem for the group with Jowdy. The question of where all of the embezzled funds went still remains 7 years after the filed 2009 litigation and underhandedly ignored and legally safeguarded by Jowdy with his never ending budget thefts (*from Diamanté Cabo for his own personal benefits -- and certainly not to the benefit of the shareholders that Jowdy's fiduciary responsibility should be protecting*) and ongoing representation by Former FBI Director Louis Freeh and his associates at Pepper Hamilton.

See R33 659 - Michael Peca SDNY concerns for Jowdy accounting

Jowdy March 2010 confession to the FBI of stealing the Kenner investment funds from Baja Development Corp for his personal and unauthorized use...completely ignored by Galimoto since 2010 to the detriment of Kenner and the rest of the Kenner investors.

See R33 660 -- Jowdy 2010 proffer -- Jowdy used Kenner funds to pay personal expenses

- *The agent taking the notes actually noted that Jowdy was no longer stealing the funds from Baja Development Corp for his personal use – like this was a bonus...*

After the Jowdy 2-day confessional deposition transcripts were received in February 2010 (*including all of the Jowdy theft confessions – that Kenner was called a LIAR for in 2015 by the government from Opening Remarks thru rebuttal summation*) – Kenner forwarded all of the Plaintiffs (19 v. Jowdy) copies. In fact – one of the CA Internet news sites posted the Jowdy 2-day depositions on-line for the world to see.

Every investor – including the Hawai'i partners – had unabated access to the Jowdy confessions...

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- After the conclusion of day 2 (*January 6, 2010*) – no Hawai'i &/or México investor could have been uninformed (*unless they specifically chose to be*) about the Jowdy loans from Hawai'i, Jowdy's own confessional-confirmations, and Jowdy's deliberate disregard to repay them &/or any of the other \$4mm+ in personal loans from Kenner, Stumpel, Norstrom, Murray and Gaudet.
- This would have clearly been categorized as independent knowledge of the loans to Jowdy – other than from Kenner. ***It was a deposition confessional!***

Although the government alleged in several of its pretrial motions that Kenner owned Baja Development Corp (*and then Jowdy's brother owned it*) -- Komatireddy claimed in her summation that Kenner used Baja Development Corp to acquire his Cabo interest (***ANOTHER clear known FABRICATION and FALLACY by the government – based on evidence the government possessed pre-trial and systematically disregarded – to Kenner's never-ending prejudice in front of the EDNY court and jury***).

Jowdy confirmed the Baja Development Corp ownership (*related to him stealing Glen Murray's money from the Palms/Vegas escrow*) during his Nevada – April 2009 deposition in the \$1mm lawsuit by Glen Murray for more “***borrowed***” (*or stolen*) funds that Jowdy refused to repay even thru 2016 – despite the judgment ***and Jowdy's unlimited access to money*** after the Nevada adverse judgment with called Jowdy *not believable* throughout the trial.

See R33 015 -- NV ruling in Murray v Jowdy

Amazingly – Jowdy's defense theme in the December 2010 trial was that Jowdy had access to the 2004 Hawai'i loan agreement with 15% annual interest with Kenner – so why would Jowdy have tried to arrange a 30-day 10% loan from Glen Murray (*and also his director of golf – Robert Gaudet – despite Jowdy emails simultaneously soliciting the funds also through Gaudet*).

Jowdy and his attorneys admitted the 2004 Hawai'i loan agreement in evidence as ***authentic*** (*contradicting the government's 2015 theory and nonstop badgering of Kenner throughout the trial*) – also contradicting Jowdy 2008-09 NO LOANS and DOCUMENT FORGERY claims in his previous AZ case defense. ***Jowdy's defense frauds saw no boundaries – while being protected by the FBI.***

All who were present in the December 2010 courtroom – ***specifically Ronald Richards, Glen Murray and Kenner – were SHOCKED by the Jowdy brazen and defiant defense strategy...***

See R33 661 -- Jowdy confirmed in Nevada April 13, 2009 deposition owning 100% of Baja Development Corp

Thus – the government was clearly aware of the ***Baja Development Corp*** ownership at all times (*notwithstanding the government's nonstop work with Jowdy's attorney, Tom Harvey before the Indictment since 2009 thru the end of trial in 2015 – 6 years later*)...despite the government's false proffers and allegations both to the courts in pre-trial motions and during the EDNY trial.

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Komatireddy during her rebuttal summation stated the following LIE nevertheless re – Baja Development Corp –

17 Mr. Kenner told you that he used that money to
18 get his piece in the Mexico investment with Ken Jowdy.
19 You know exactly what that's for. That's in evidence.
20 Mr. LaRusso knows exactly what it's for too.

Please note that Kenner NEVER claimed that the Baja Development Corp money was related to Kenner's Baja Ventures 2006 (Diamanté Cabo) interest.

***This was another blatant LIE by the government...
Used to disparage Kenner.***

- ***In fact – the government was in possession of the DDM Balance Sheet (below) from Jowdy, which confirms all of the Hawai'i funds are still (to this day) on Jowdy's accounting records as loans to Hawai'i and Kenner.***

See R33 315 -- DDM Balance Sheet with Little Isle 4 & Ula loans

In April 2009 - Jowdy went on to claim that he had “**NO LOANS**” (in his April 2009 version of the truth led by Tom Harvey to deny, deny, and deny – one month before his Nolan arbitration testimony) with any Kenner entity or personally.

- Again – Please note that that this is just prior to Jowdy receiving the dismissal in the AZ case for the \$5mm PLUS in unpaid loans to Hawai'i...and his follow-up January 2010 confessions about all of the loans...

See R33 662 -- Jowdy claims no loans to Kenner &/or any Kenner entity April 2009

Once the 2008-09 case was dismissed - 9 months later - in January 2010 - Jowdy confessed to all of them!

Now – despite this testimony by Jowdy in April 2009 – Jowdy and Harvey turned over the DDM Balance Sheet in January 2010 with the following funds owed to Kenner on the previous page (***see PK_SEC_021194***). DDM represented two (2) payables to Kenner as follows --

Gdm33Payable

29,972.00

...And

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PKenner

396,090.45

- ❖ None of these totals include the original money from Kenner' \$350,000 "***cash***" that was invested with Jowdy for the Diamanté del Mar start up in 2002 and 2003 &/or the \$125,000 "***cash***" given to Jowdy for the Diamante Air Falcon originally in 2004-05...***all stolen by Jowdy...***

Nonetheless – Jowdy's own Diamanté records total -- \$463,562 – owed to Kenner

Which is certainly more than NONE...as he lied in the Nevada court deposition.

Despite the April 2009 NV testimony (above) – Jowdy's own testimony from the Nolan Arbitration in May 2009 confirmed that Jowdy received funds from Kenner.

See R33 663 -- At Nolan 2009 arbitration – Jowdy confirmed receiving personal investment funds from Kenner

Each of the Plaintiffs received a disc from Kenner with all of the discovery released by Jowdy in the CA case – THUS -- Berard was aware that Jowdy had released these accounting records during the CA case including the acknowledgement of the loans to DDM – (***also Kenner EXHIBIT F-28***)...

- ❖ ***Although – consistent with each of the government's witnesses -- perhaps, they received it but did not view/read them...***

In fact while testifying in the Nolan arbitration – Jowdy decided to LIE to the ARBITRATION PANEL when specifically asked if there was a loan on the Northern Baja (*Diamanté del Mar*) parcel. Jowdy's brashness had no limits once he was represented by Louis Freeh beginning in 2008 during the termination of the settlement talks with Kenner and the Kenner investors (*mediated with Constantine's help*).

The loan that Jowdy denied was the \$3mm hard-money loan (*from KSI capital of New Jersey – and later sued by them for breach of contract/another unpaid loan*) that Jowdy immediately robbed in February and March 2006 (*with Bill Najam and their cousin Edward Essa*) -- eventually forcing the DDM project into foreclosure and creating a \$10mm total loss to Kenner and the Kenner investors – ALSO – ***ignored by Galioto since June 2009...***

See R33 664 -- In 2009 – Jowdy lied to the Arbitration Panel that there was no loan on the DDM project – despite the \$3m KSI Capital hard-money loan since February 21, 2006

The government – *during the forfeiture proceedings* – produced an email from Jowdy to Kenner in or about November 2005. Jowdy claimed to Kenner that there was a lender – named KSI Capital – who might fund Jowdy's DDM loan. Jowdy told Kenner his biggest concern is that KSI told Jowdy that he could not cash out any funds for the developer – if he took the loan.

This is significant for two independent reasons.

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1. Jowdy was forewarning the problem he would have with the KSI loan -- since he owed Kenner either 100% of the Hawai'i loan repayments – *per the 2004 Hawai'i loan agreement* – or if the loan was less than the outstanding Hawai'i loan balance – Jowdy would need to pay only $\frac{1}{2}$ of the outstanding principle, and
2. Jowdy and Najam ignored the restrictions and constraints of the KSI loan – *which closed unknown to Kenner and the Kenner investors in February 2006* – and pillaged the loan of at least \$1mm of the net \$2.2mm Jowdy received to the eventual foreclosure detriment of Kenner and the Kenner investors at DDM.

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Kaiser assists the government in the deliberate Kenner forgery defamation --

Now – in accordance with the government’s attempts to destroy Kenner’s trustworthiness with the court thru Kaiser’s malevolent and fabricated forgery testimony – Kaiser makes unquestioned and untruthful claims about the veracity of a document that the government alluded to as a fake (*without hiring the same forensic expert used with the Kaiser allegations – despite the actual and overwhelming proof disputing Kaiser's deceitful assertions*) but never pursued it – based on the overwhelming proof of its authenticity – *from Jowdy himself*.

See R33 665 -- Kaiser premeditated lies about Hawai'i loan document forgery – despite Jowdy's 2010 admissions

Notwithstanding Kaiser's premeditated comments prearranged between Kaiser and the government -- Jowdy used the 2004 Hawai'i loan document as his main defense exhibit in his December 2010 Nevada defense – admitting it thru his own witness, Robert Gaudet.

Kenner's defense caught Kaiser co-conspirator Berard off guard when asking him if he knew about the dismissal of the 2008-09 AZ litigation versus Jowdy because of a forgery – and Berard responded in Kenner’s favor – further proving Kaiser's perjury while on the stand –

Q Well, you were never told by anyone that the lawsuit was dropped because a judge determined that the loan itself was a result of a forgery. You were never told that, correct?
A I was not.

On December 1, 2010, Robert Gaudet was called as a witness during the 4-day bench trial in AZ – titles: *Glen Murray v. Ken Jowdy (v. Kenner – 3rd party defendant to Jowdy) (Nevada -- Case A571984)*, which Glen Murray prevailed at trial with a \$1mm+ verdict and Kenner prevailed v. Jowdy in the cross-claim (*in Pro Se*).

- Kenner represented himself in the 4-day bench trial to the praises of the seasoned Nevada judge.

During the trial, Jowdy’s defense attorneys specifically asked Gaudet about the 2004 Hawai'i loan document which Jowdy signed with Kenner and Little Isle 4 in December 2004 at Jowdy’s home and office.

Gaudet testified, confirming both witnessing and signing the loan agreement with Kenner and Gaudet.

See R33 666 -- In Nevada 2010 – Jowdy authenticates 2004 Hawai'i Loan agreement in trial defense thru signature witness Gaudet

In 2010 – after Jowdy previously claimed (*in 2009*) that the loan agreement was a forgery in order to trigger a “***stay on Kenner and Little Isle 4’s discovery***” of the Jowdy frauds related to the \$5mm PLUS in unpaid loans in the AZ case – but rather redirect the focus (*for about*

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one year) to the expedited discovery of the authenticity of the 2004 Hawai'i loan agreement and then further expand the expedited discovery to Kenner's Nevada residence – Jowdy's attorneys authenticated the document in the December 2010 Nevada case – Glen Murray v. Jowdy (*v. Kenner – 3rd Party defendant to Jowdy cross-complaint*).

The citizenship discovery was curiously granted by the court despite Kenner being a Nevada citizen and meeting all Nevada requirements since 2006 – including but not limited to –

- Living in Nevada full-time since 2006 with his girl-friend (*who moved there from Florida to be with Kenner in 2006*),
- Holding a NV driver's license since 2006,
- Holding a NV voter's registration card since 2006 (*years before any of the litigation efforts by Jowdy challenged its veracity*), and
- None of those items refuted Kenner's 2007 AZ divorce decree, which acknowledged Kenner moving to Nevada to be with his girlfriend.

All of the Kenner Nevada documents were in the trial court's possession **BEFORE** granting further expedited discovery to Jowdy while staying 100% of the Little Isle 4 discovery of Jowdy. There was nothing more to discover about Kenner's NV "**citizenship**".

Please note that Kenner actually moved to Las Vegas at the same time as Jowdy (2005-06) to work together on the Diamanté project – THUS – Jowdy was 100% aware of the fact that Kenner was a full-time Nevada resident.

- ***Jowdy's legal tactics were just another form of legal harassment to force Kenner to spend more legal funds (over \$100,000 personally) and have the Jowdy frauds in the AZ case be further delayed...***
- ***Jowdy was dreadfully fearful of the results of the potential Kenner and Little Isle 4 discovery efforts – which clearly contradicted Jowdy's claims once the records were received (in the CA case – January 2010) one month after the AZ case was terminated in December 2009.***

After all of the real evidence previously in the government's hands – and the underlying truths – the government tried to claim that the AZ case versus Jowdy was thrown out – in accordance with Kaiser's flawed testimony yet prejudicial and calculated – as a result of a forgery (*never proven – since it is a lie – confirmed by Jowdy's own Nevada defense in December 2010*).

The court had to address the government's frivolous and slanderous attempts.

See R33 667 -- The EDNY court denies the government's rhetoric about the alleged forgery

- Please note that that Kenner only failed to respond to an order to address why Kenner had not appeared for day 2 of his deposition or face the court's ire – but

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after new counsel for the Hawai'i entities (*Little Isle 4 and Ula Makika*), Tom Baker, appeared with Kenner for the 2nd deposition day (*on December 4th, 2009*) before the due date for the order to inform the court – ***Attorney Baker concluded that there was no further need for Kenner to respond to the court in a written form since the underlying issue had been concluded.***

- ❖ ***Apparently – the AZ court disagreed with Baker's assessment and dismissed the case – which shocked Baker...The Court denied his appeal even after he turned over the Jowdy confessions one month later.***

Despite the courts DENIAL ruling the previous day – Michiewicz egregiously and disobediently tried to reestablish the defamatory and prejudicial position versus Kenner as follows –

5 BY MR. MISKIEWICZ:
 6 Q. That was the lawsuit that was dismissed. Right?
 7 A. That was the Arizona lawsuit that was dismissed.
 8 Q. And it was dismissed because you were ordered by the
 9 court to provide discovery on an expedited fashion to
 10 substantiate the claim that that note that is now a Kenner
 11 Exhibit was true; not a forgery. Right?
 12 MR. HALEY: I object.
 13 THE COURT: Sustained.
 14 MR. HALEY: Thank you.

Despite this clear and convincing evidence – *notwithstanding the simple fact that Jowdy's attorney, Tom Harvey, worked hand-in-hand with Michiewicz and Komatireddy throughout the Kenner trial to assist in the prosecution at every trial break – **the government claimed at the trial the loan document was fake*** – actually being *mocked* by Komatireddy in her Rebuttal Summation.

See R33 668 -- Komatireddy in rebuttal summation claims Jowdy loan agreement as BOGUS

Komatireddy's launched her malicious and disingenuous proffer at Kenner's veracity and legitimacy -- despite the fact that Kaiser confirmed he had received a copy of the loan agreement at his house (*in 2004 – at the time he was meeting with Jowdy in NYC and México – again -- despite his LIES and DENIALS about his October 19, 2010 FBI proffer during the EDNY*) – especially since Kaiser requested the original be signed by Jowdy in the first place after the first \$250,000 loan and \$52,000 repayment in November 2004 – as follows –

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20 Q Did you ever see, sir, a document entitled Revolving
21 Line of Credit Loans December 7, 2004 which purports to be
22 or is a written loan agreement between Kenner Jowdy and
23 the Hawaii Project?
24 A Yes; Mr. Kenner sent it to my residence.

- Please note that Kaiser confirmed meeting with Jowdy multiple times to discuss the Hawai'i loan to México and told the FBI on October 19, 2010 that there was "**an agreement**".

was Agreement to borrow \$ from Hawaii-

- It is **NOT** plausible that Kaiser had these meetings with Jowdy – *after receiving the loan agreement in NY from Kenner* – and Kaiser never discussed the existence of the loan agreement with Jowdy at any point in those five (5) or so meetings...all which took place between 2003 and 2005 – per the FBI notes that Kaiser also denied seeing during their meeting to the EDNY court and jury...

The first meeting between Kaiser and Jowdy took place in 2003 according to the October 19, 2010 proffer by Kaiser to the FBI as follows –

met Jowdy = 2x in NYC
in NYC = Trust
1st times
there
with a girl
At meeting with Kenner
discuss:
= funding in Mexico
First meeting in 2003...
[2003] = Tandy restaurant
= discuss prop in Hawaii

In August 2005 (a year after the loan to Jowdy began with Kaiser's knowledge) – Kaiser felt comfortable enough – as he testified to the arbitration panel in May 2009 – that he raised \$1mm from his "**friends & family**" to loan/investment with the Hawai'i partners – **specifically for the Jowdy loan at 15%!**

See R33 669 -- In 2009 arbitration – Kaiser confirms raising \$1mm from his "friends & family" specifically for the Jowdy loans

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And -- ***again*** -- Komatireddy mocks the existence of the loan agreement during rebuttal summation.

See R33 670 -- Komatireddy mocks Jowdy loan agreement during rebuttal summation

Gaudet was interviewed by FBI Agent Galioto and IRS Agent Wayne on several occasions pre-trial (3500 notes) and was never asked to verify the loan document as authentic -- because Galioto knew the answer -- and it would ***ABSOLUTELY*** contradict the government's fundamental case theory and Kenner slander approach at trial.

On Day 2 of the NV trial, Kenner was on the witness stand -- *and during 29-pages of cross examination by Jowdy's attorney* -- Kenner was asked why Jowdy borrowed funds from Glen Murray at 10% for 30 days when he could simply borrow more money against the Hawai'i loan at a cheaper interest -- ***THUS and AGAIN*** -- Jowdy's counsel were ***VALIDATING and AUTHENTICATING*** the Hawai'i 2004 loan agreement between the parties ***as their defense of the Murray case.***

Jowdy's attorney -- Ms. Lee -- again confirmed with Kenner that they had authenticated the Revolving Line of Credit Agreement (*the 2004 Hawai'i loan agreement*) by the document witness, Robert Gaudet.

See R33 671 -- Jowdy's Nevada attorneys validated the 2004 Hawai'i Loan agreement as authentic in Jowdy's defense

In the final NV judgment against Jowdy -- for the \$1mm+ with Glen Murray represented by Ronald Richards -- the judge confirmed Kenner requested the original Murray \$791,000 loan to Jowdy be returned via email.

See R33 672 -- Nevada Judge's adverse decision to Jowdy in LOAN DENIAL case

Again -- Galioto and the government sat idly by when Kaiser made another reference to his signature being forged on an agreement that allowed Kaiser to become the Managing Member of Na'alehu Ventures 2006.

If Kaiser had ever challenged his authority as the Managing Member of Na'alehu Ventures 2006 in the past -- Kenner on behalf of himself and the remainder of the despondent and downhearted Hawai'i investors (*based on Kaiser's non-action since December 2007*) would have sued Lehman Brothers, JV Partner (*Alan Worden*), and Trimont Real Estate Advisors (*3rd party audit firm hired by Bhatti at Lehman Brothers*) for the \$11mm in budget frauds, embezzlements, racketeering, etcetera related to the Hawai'i JV -- which Berard and Kaiser (*as the Managing Member since December 31, 2007 -- below*) refused to allow through attorney Stolper (*or otherwise*)...

See R33 673 -- Kaiser challenges his signature again related to becoming the Managing Member of Na'alehu Ventures 2006

In fact in 2013 (*which Kaiser found out thru Galioto*) -- Kenner had prepared to sue Kaiser on behalf of the Hawai'i investors for multiple frauds -- including but not limited Kaiser's lack of accounting since December 2007 (*6 years of fiduciary breach by Kaiser*). No tax

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documents had been prepared and Kaiser's complete fiduciary responsibilities had been breeched – including but not limited to choosing a lucrative México job with Jowdy in lieu of pursuing Jowdy's friends, Worden and Bhatti, thru litigation for Na'alehu Ventures 2006...

This litigation would have been the 3rd lawsuit versus Kaiser – spearheaded by Kenner – which was derailed by Galioto's Indictment of Kenner to protect Kaiser, Berard, Jowdy and others for their ongoing and supported criminal actions versus Kenner and other Kenner investors.

See R33 674 -- 2013 pending litigation versus Kaiser from Hawai'i members – led by Kenner

Without the following transfer agreement – Kenner would have initiated litigation as early as 2009. The litigation for the Hawai'i members of Little Isle 4 and Na'alehu Ventures 2006 against Bhatti and Jowdy close-friend and Hawai'i JV partner – Alan Worden would have been for multiple frauds based on underlying criminal actions related to robbing the Hawai'i development budgets under Bhatti's approvals – **THUS** – no true “**checks-and-balances**” in place for his best friend, Worden.

The December 31, 2007 transfer agreement between Kenner and Kaiser is the management document Kaiser argued over in EDNY regarding his ability to authenticate – despite it granting Kaiser management control over Na'alehu Ventures 2006 and restricting Kenner and the Kenner investors from suing Kaiser's new, close friends, Bhatti (*from Lehman Brothers*) and Alan Worden, who looted over \$11mm from the budgets in 2-years (*August 2006 thru August 2008 – when Lehman Brothers filed for bankruptcy*) – without moving a shovel of dirt in Hawai'i. It was truly egregious – but also ignored by Galioto after Kenner's June 24, 2009 FBI proffer.

The bankruptcy was the only mechanism that stopped the ongoing theft of the Hawai'i budget that was being drained at about \$458,333 per month on average – 100% for Worden and Bhatti's personal benefit.

This was occurring at the same time that Kaiser refused to deal with Bhatti and Worden over the unpaid \$4mm in MILESTONES that were negotiated as a significant issue in the 2006 JV agreement between the parties.

Once Kenner was indicted – all of the Hawai'i issues for Bhatti, Worden and Kaiser disappeared. It was the ultimate incentive for Jowdy to hire Kaiser and protect himself and his c-conspiratorial friends and their near-decade of unchecked frauds.

See R33 675 -- 2007 Na'alehu Ventures 2006 transfer agreement with Kaiser

Despite the fact that Kaiser wanted to further allege forgeries that the government did not evaluate with an expert thus further prejudicing Kenner – Kenner and the remainder of the Hawai'i investors were barred from suing Worden and the other related fraudsters in the post closing deal...

Allegedly after Kaiser and Berard both cut off Kenner in 2010 &/or perhaps Berard in summer 2009 (*after the Nolan ruling per his EDNY testimony*) -- Berard and Kaiser were still trying to sue Worden and Lehman Brothers with Kenner's help until they met with Jowdy in

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México in late 2011 ***when they cut off ties to Kenner and the rest of the Hawai'i & México investors*** – in order to stop any litigation versus Worden (Jowdy's & Bhatt's friend) in Hawai'i at the same time receiving high-paying jobs from Jowdy and Harvey in México.

Berard (*below*) acknowledges that Kenner had arranged to have Attorney Stolper and Stolper's colleague from Rhode Island represent the Hawaii partners v. Lehman Brothers, Alan Worden and a few other entities who defrauded the Hawai'i group of about \$11mm post-JV closing in Hawai'i.

Ultimately and despite Kenner's begging of Kaiser to authorize the litigation efforts for Na'alehu Ventures 2006, Kaiser met with Worden face-to-face in or about September 2011 and decided that he did NOT want to sue Worden et. al. despite the obvious frauds.

INSTEAD -- Kaiser went on to demand another copy of the manager transfer agreement (*above*) from Kenner to Kaiser so Kenner could not initiate the lawsuit himself (***without Kaiser's Managing Member approval – despite his forgery intimation to the EDNY courts in 2015***).

Worden had a copy of the Managing Member transfer agreement between Kaiser and Kenner but Kaiser had obviously lost his copy -- even though the government would lead you to believe that a document "*that important*" would have been delivered by a notary &/or an attorney and original copies would have been signed by all parties.

Despite – the government having full possession of the Nevada transcripts – where Jowdy and his own attorneys authenticate the loan document in 2010 (*above*) that the government claims is a FORGERY in 2015 – Michiewicz prejudiciously and in full cognizance surmised that Kenner mishandled the signing of the loan agreement – and that was the real issue – not the UNPAID and confessed loans by Jowdy.

See R33 676 -- Michiewicz false representations of the 2004 Hawai'i loan agreement during summation

Working hand-in-hand with Kaiser -- Berard continued to demand the additional Managing Member transfer copy from Kenner even if Alan (*Worden*) already had the original – perhaps not aware of Kaiser's plans to join Jowdy as of yet. Kenner had already cut Kaiser off by mid-2011 since Kaiser had failed for over a year to contribute any of AZ renovation project expenses (*about \$100,000 per month*) and refusing to send Kenner the Trust paperwork with Kenner's beneficial status as he previously confirmed in November 2008 (*3 years earlier*).

See R33 678 -- Kaiser defrauds Kenner and never delivers Kenner the Trust paperwork for the AZ house before stealing the title with Berard

See R33 677 -- Berard continues to demand Na'alehu Ventures 2006 Managing Member paperwork

Clearly – with Berard asking Kenner to speak with the potential attorney to sue the Hawai'i JV partner – Berard had "***not lost faith in Kenner***" as he proclaimed to the EDNY in spring 2009 when he learned about his LOC collateral seizure – allegedly from a phone call informing him of the LOC default (*another Berard fabrication – considering the multitude of*

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texts between Kenner and Berard and the letter between Northern Trust and Berard – individually).

After Berard and Kaiser received the Na'alehu Ventures 2007 Managing Member paperwork in September 2011 – *even though Kaiser lost the original from December 31, 2007* – they had cut off all the Hawai'i investors options to recover the millions due from the JV, Worden, Lehman Brothers and legally address the frauds that the Audit Firm (*Trimont*) had co-conspired...

- Please note that this is the same Audit Firms used by Jowdy & Bhatti in Cabo, Texas and Tennessee thru racketeering actions to plunder the project budgets from the inside...*without real checks & balances*...also explained by Kenner in June 2009 to Galio to and the FBI – and methodically IGNORED.

135 37	+14015 246929 Bryan Berard*	10/5/2011 9:34:56 PM(UTC+0)	Re ad	That won't work. Me and johnny will deal with alan (in Hawai'i). U do what u can to deal with Jowdy and mexico and get our \$ 1st. Than we can go from there.	
-----------	--------------------------------------	-----------------------------------	----------	--	--

Then -- inconsistently and two (2) days later – Berard sent the following text to Kenner –

16 95 7	+14015 246929 Bryan Berard*	10/7/201 0 11:56:06 PM(UT C+0)	Re ad	Hopefully can go after Leaman Borthers soon too	
---------------	--------------------------------------	--	----------	--	--

Then -- One week later -- Berard sent Kenner another the follow-up text regarding help going after Worden (*in Hawai'i*) –

171 50	+140152 46929 Bryan Berard*	10/15/201 0 1:27:47 AM(UTC +0)	Rea d	Any word when ur coming to NYC yet to meet with Stolper and Lawyer from Rhode Island for the (Hawai'i lawsuit)	
-----------	--------------------------------------	---	----------	---	--

...And then -- Kaiser and Berard took jobs from Worden's friend, Jowdy, in Cabo...& disregarded all of the Hawaii investors...

During his summation -- Michiewicz went so far ethically out of bounds while confirming Kaiser's forgery allegation as fact in the AZ case versus Jowdy for the \$5mm UNPAID loan – in direct contradiction to the EDNY court's ruling that Judge Bianco did not read the AZ ruling as concluding a forgery.

Michiewicz' position is also CONTRADICTING ***BOTH*** the Gaudet evidence of confirmations as well as the December 2010 Jowdy affirmation of the 2004 loan agreement.

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Notwithstanding – Michiewicz proffered to the jury during summation as if the forgery was a forgone conclusion ratified by himself as the lead prosecutor, the EDNY Court, and the US government against Kenner – as follows --

2 Remember of those litigation expenses, one case
3 was dismissed and John Kaiser testified that he was told
4 by the defendant himself, Mr. Kenner, that it was
5 dismissed because of a forgery. You have to evaluate
6 Mr. Kaiser's credibility on that. He did tell you that,
7 you know, he was best friends, he was a close friend and
8 then after time hit the very end, he ruined my life.
9 That's legitimate, you must evaluate his bias and his
10 anger, his anger. I submit there is a difference between
11 biased and lying and being biased because you are angry
12 because you've been defrauded for years by one man.

Prosecutorial Misconduct for Rule 33***MORE ALLEGED FORGERY ISSUES --***

Kaiser was not the only witness that the government tried to slip thru with the non-pretrial-disclosure of alleged FORGERIES – but “***on the fly***” asked some of them to concur with the government theories.

This occurred to the surprise and prejudice to the defense despite the pre-trial requests from Kenner and the courts order to the government to “*check with all of their witnesses about forgeries*” as follows – even though none were produced.

See R33 679 -- Kenner defense is forced to raise FORGERY mishaps by the government

Despite the government claims that the 2004 Hawai'i loan document was a forgery – they presented no foundational evidence at trial – once they realized their best strategy was simply to assassinate Kenner with non-respond able claims that the 2004 Hawai'i loan agreement “***is just fake***”.

This strategy -- *without ethics &/or a moral compass* -- flew in the face of the myriad of Gaudet (*witness*) testimony in the government's possession pre-trial as well as the December 2010 Jowdy admission of the 2004 Hawai'i loan agreement as authentic thru his former Diamanté Direct of Golf.

See R33 D -- Gaudet confirmation testimony of 2004 Hawaii loan agreement

In addition – the government initially claimed thru their two star witnesses – Berard and Kaiser – that a Kaiser México document was forged (*by someone – alleging Kenner*). This unfounded rhetoric – by the two Jowdy sidekicks who claim (*with Jowdy and Harvey*) that *anything adverse to them is FORGED* – despite their long-history of document fabrications and forging in EDNY evidence (*and certainly available in a separate report for the EDNY court upon request*).

This alleged FORGERY is clearly refuted during a FBI-recorded conversation between Berard and Gaudet in México –

- Berard and Kaiser began terrorizing Gaudet in México in 2012 with the help of Jowdy's México thugs (***from Berard, Kaiser and Gaudet secret FBI recordings***) --

TRACK 8 (@ 20:30) – Kaiser tells Gaudet – “***we are looking at you***”

TRACK 8 (@ 37:00) – Kaiser tells Gaudet – “***you got a lot of thinking to do***”

TRACK 6 (@ 6:55) – Kaiser tells Gaudet – “***there are a few ways this can go***”



TRACK 6 [23:08] (@ 0:00) – Gaudet tells Berard – “***investigators from México went to his house to harass him about Kaiser's signatures on México testimonial***”

- Please note that this is the document the government claimed pre-trial was a

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forgery – but Berard later admitted was really signed by Kaiser. ***The frauds to protect themselves and Jowdy were endless*** – all induced and reinforced by Galioto slander efforts with Kenner's investors, attorneys, and clients from 2009 thru the conclusion of the EDNY trial.

After Gaudet told Berard that he has been followed in México and intimidated –

TRACK 6 [23:08] (@ 8:40) – Berard tells Gaudet -- “***FORGERIES are very serious in México***” ...

Gaudet went on to explain exactly what they all did together in the prosecutor's office the day they signed and then – ***STUNNINGLY*** –



Berard went on to admit to Gaudet that he and Kaiser signed “BLANK DOCUMENTS” in México before they left the prosecutors office to fill in their testimonials.

@ 9:40 – Berard states – ***We did not make testimonies, we waited outside forever, it took too long, we actually signed FAKE, not FAKE, uhh, we signed BLANK PIECES OF PAPER, with our signatures...***

- *Kenner was not in México when they were with Gaudet at the prosecutor's office with their México attorney, Barreras.*
- *Nonetheless – the government in 2014 presented the Kaiser México document to the EDNY as a forgery...related to Kenner to slander Kenner pre-trial in front of the EDNY court.*

How did Kaiser and Berard claim their signatures were FORGERIES if they both SIGNED BLANK DOCUMENTS and admitted to it?

- This is notwithstanding the fact that Kaiser testified in an México court ***under oath*** that his (*Berard-acknowledged*) signature was a forgery – further delaying the 2012 criminal cases against Jowdy another 12 months (*until just before Galioto arrested Kenner*). All of these hostile efforts initiated once Kaiser and Berard became employed by Jowdy in México.

The alleged forgery in the México Court was more of the calculated recklessness by Jowdy, Kaiser and Berard to disrupt Kenner and Kenner's investor's efforts in México to seek justice from the Jowdy thefts (*now with Kaiser and Berard acting as Jowdy henchmen – on salary*)...

- Please note that Wayne and Galioto (*in Cabo san Lucas*) never asked Gaudet in his April 2014 in-person interview (*with special agent Drake -- as well*) – ***OR AT ANY OTHER TIME*** – if he signed the Jowdy 2004 loan agreement as a witness or about the alleged Kaiser México forgeries (*after the recorded FBI calls in 2012*) – leaving the Kenner defense in the position to discover the evidence already in the government's possession and refute the foundationless and knowingly fabricated claims.

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Urban Expansion loan conspiracy

In August 2005 – immediately after the Hawai'i partners cancelled the Lehman Brothers deal for Waikapuna (*and not the entire 6000 acres – like in the August 2006 deal*) for being ***"too egregious"*** with terms during an 11th hour attempted change – the group decided to walk away from the deal and sought different financing options – although at a steep price (*not considering FBI and government claims of conspiracy years later – and prison time for Kenner for not accepting the Lehman Brothers offer*) – after making a tough yet prudent business decision that alternatively would have lost the Waikapuna parcel to Lehman Brothers in 2 years – *based on the new, onerous loan terms*.

Hawai'i COO – Chris Manfredi – *and Kaiser best friend at the time* – confirmed the ***"egregious"*** nature of the Lehman Brothers deal in 2005 and the decision ***"by us"*** (*not Kenner in singularity*) to cancel the 11th hour-ridiculously termed deal.

See R33 900 -- Manfredi-Lehman deal 2005 "too egregious"

Despite the government's nonstop attacks on the genuineness and veracity of the Urban Expansion loan that saved the Waikapuna, \$70mm appraised parcel in 2005 (*see below*) – the government also attacked the consulting payments to Constantine that secured the initial loan – eventually leading to the \$105mm Lehman Brothers transaction. The Lehman Brothers deal in 2006 would not have been completed without the Waikapuna oceanfront parcel the Urban Expansion deal saved. No lenders – specifically Lehman Brothers – had any lending interest unless Little Isle 4 (*and the other partners*) had oceanfront property in the development deal.

- Please note that if Jowdy and Bhatti from Lehman Brothers had not delayed the repayments of the 2004 Hawai'i loan to Jowdy past the March 2006 Cabo closing – Kenner would have been able to accept the far better development partnership with Trillium investors (***Losch and Dewar***) out of Arizona – which Constantine arranged in February 2006 (*and evidenced during the EDNY trial*).

See R33 910 -- Constantine Hawai'i deal with AZ lenders and development partners

As a result of the unpaid Jowdy debt to Hawai'i and the promises from Bhatti at Lehman Brothers to repay the Jowdy loans thru a *"slush fund"* of real estate commissions within 24 months (*with the Hawai'i 15% interest continuing to accrue*) – Kenner only saw upside to the deal for the Hawai'i partners (*including Little Isle 4*).

The Cabo *"slush fund"* according to Bhatti – would be funded by the 11% commissions from Phase I real estate sales that were projected at \$129mm from the 65 Phase I golf villas. Kenner and Gaudet had pre-sold almost 40 villas (*approximately \$80mm in pre-sales*) – thus Kenner had full confidence in the Bhatti-suggested repayment plan.

Notwithstanding the ultimate Jowdy and Bhatti Cabo budget thefts and non-actions for the first year thru March 2007 – Kenner discovered the ongoing budget frauds in 2007 after a year of no loan payments from Jowdy &/or Bhatti's hollow proposal.

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- Please note that Bhatti also reneged on the \$4mm MILESTONE payments as well as soon as his long-term friend, Worden, took over the Hawai'i project and began the \$11mm – two year – looting scheme before the 2008 Lehman Brothers bankruptcy – ***despite not moving a single shovel of dirt!***

See R33 911 -- Burdick affidavit re-Jowdy frauds

Jowdy's debt was no secret to anyone despite the tortious 2015 government trial proffers.

See R33 034 -- Jowdy-Constantine confirm \$8.5mm PLUS in debt to Kenner

See R33 908 -- April 2006 email to Bhatti re- \$5mm payments & JV

In November 2007 (*only a few months later*) – these emails confirm that not only was Jowdy well aware of the Kenner debt due and the unpaid loans (*used in the Cabo project by Jowdy et. al.*) in November 2007 but Constantine email acknowledgment to Jowdy and Najam includes Bhatti's (*Lehman Brothers' portfolio manager*) understanding of the Jowdy debt to Kenner and investors.

See R33 909 -- Constantine email acknowledgment to Jowdy and Najam includes Bhatti's understanding of the Jowdy debt to Kenner and investors

- ❖ Please note that with the BATE STAMPS KJ6751 and KJ6752 – these are documents that Jowdy turned over to Ronald Richards in January 2010 – in the CALIFORNIA LITIGATION – IMMEDIATELY AFTER THE 2008 AZ CASE FOR NON REPAYMENT OF THE Hawai'i LOANS BY Jowdy WAS DISMISSED, THUS AVOIDING A CONFLICT OF Jowdy's DEFENSE (“***no loans***”) in the AZ CASE...
- ❖ Kenner also turned these documents – acknowledging the Jowdy loans – over to the SEC in 2011 – thus in the possession of the government 4 years before the EDNY trial versus Kenner – and the government's slanderous prosecution theory about “***no loans***”.

Contrary to the government's claims that Kenner delayed the Lehman Brothers loan in Hawai'i for one year in order to insert the expensive Urban Expansion loan – after the Little Isle 4 group termination of the 2005 Lehman Brothers development deal for being “***too egregious***” (*in Manfredi's own words*) – there were no dealings with Lehman Brothers until the end of 2005 (*about 6 months later*) resulting in a new term sheet for the Diamanté Cabo project.

Kenner had no personal connection to Lehman Brothers &/or the lender (*Bhatti*) – thus it would be improbable that one of the top ten commercial lending banks in the world at the time would be pleased to simply delay a development deal for a year and incur larger start-up expenses just so Kenner could get Constantine and Urban Expansion involved.

DCSL loan February 28, 2006 loan (*delayed to March 26, 2006*) --

See R33 901 -- 8861-8870 DCSL Loan Documents

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Jan 06 06 10:12a

Diamante South ("Property")
Cabo San Lucas, Baja Sur, Mexico
January 6, 2006

Loan fee of \$2.5mm at the closing

Loan Fee: Borrower shall pay a fee to Lender as consideration for arranging and providing the Loan equal to two percent (2%) of the maximum Loan Amount. Such fee shall be payable at closing through loan proceeds. The Loan Fee will not be applied to the Additional Fee.

\$100mm additional guaranteed loan fee – or 25% IRR – whichever is greater – This fee increased to \$125mm by the time of the March 2006 closing (*and was identical to the Urban Expansion pre-payment fee which Lehman Brothers paid at the August 2006 Hawai'i closing*).

Additional Fee: As a material inducement to and consideration for Lender's funding of the Loan, Borrower shall pay a fee to Lender in an amount sufficient to provide Lender with an IRR of 25%, or \$100 million including Interest paid, whichever is greater. The Additional Fee shall be earned in full upon the closing of the Loan. The Additional Fee shall be payable upon the earliest to occur of the date of prepayment, the Maturity Date or the occurrence of an Event of Default.

The cash deposited into the DCSL closing account may not be "loans" –

5. Borrower Principal(s) shall have unconditionally contributed (not loan) to Borrower at least \$7,000,000 of cash equity (prior to closing) which investment shall be maintained throughout the term of the Loan. Borrower shall submit documentation for any equity contributed to-date.

5

KJ

ACCEPTED AND AGREED*:

Kenneth A. Jowdy

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And Danska Bank 2009 loan extension fraud –

See R33 902 -- Danska-Jowdy DCSL loan fraud

**Summary of Transaction Structure
(Cabo San Lucas Mortgage Loan)**

Jowdy has ZERO capital in the DCSL project. His \$2.5mm capital account was STOLEN from the UNPAID loans from Hawaii, Kenner and Kenner lenders...

The Repayment Guaranty provides for the full repayment of the Loan to Lender. The Repayment Guaranty is secured by the following pledges: (i) Pledge and Security Agreement by Jowdy and Diamante in favor of Lender pledging each parties' membership interests in Borrower¹; (ii) Pledge and Security Agreement by Jowdy, Baja, Diamante, CSL, and KAJ in favor of Lender pledging each parties' respective membership interests in Diamante.

- Environmental Indemnity Guaranty from Jowdy and Borrower indemnifying Lender against any Environmental Claims and related environmental matters.

Equity: Based on the summary information provided, Jowdy has invested approximately \$8,400,000 USD in equity.

Additional fee increased to \$125mm under new Danska loan –

Loan Agreement, which conditions include, *inter alia*, the payment by Borrower of an amount which, when aggregated with all payments theretofore made on account of the Loan or any Mezzanine Loan² equals \$125,000,000.

Additional Payment: The Loan Agreement provides that an additional fee shall be paid by Borrower to Lender, subject to the Order of Priority, on (i) the Maturity Date or the earlier repayment of all or any portion of the Loan by acceleration or otherwise, (ii) upon an extension of the Loan, and (iii) upon any partial release of the lien of the Trust Agreement **Additional Fee**". The Additional Fee shall equal the greater of ~~(i) \$125,000,000~~, less all interest theretofore paid by Borrower on account of the Loan and any Mezzanine Loan and (ii) an amount equal to a cumulative return of 25% on the principal amount of the Loan and any Mezzanine Loan outstanding from time to time, calculated for any period on the basis of a 360 day year and the actual number of days elapsed in such period, compounded monthly.

\$125mm additional fee provision on \$125mm loan...

Urban Expansion loan of \$3.5mm (not \$5mm as Constantine tried to claim to Kenner post-agreement)

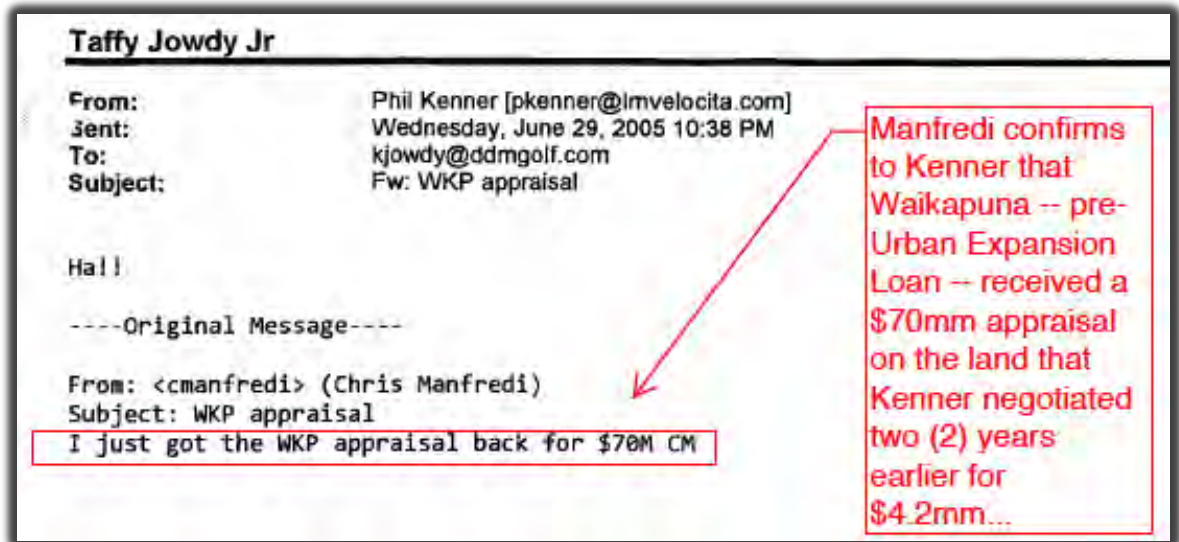
See R33 903 -- Urban Expansion \$3.5mm Agreement

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See R33 904 - Urban Expansion 3.5m Promissory note

See R33 905 - Urban Expansion 2006 settlement agreement

See R33 906 -- Waikapuna June 2005 appraisal for \$70mm



See R33 907 - Urban Expansion signed management agreement

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...arrangements shall not be a breach of any express or implied duty contained herein.

6. Compensation. Manager's fees under this Agreement shall be payable to Manager as follows:

- (a) One Million Five Hundred Thousand U.S. Dollars (\$1,500,000) at such time Owner's Gross Sales from the sale, transfer, or disposition (including gift, charitable contribution, condemnation, or otherwise) of the Property (or any portion thereof) reaches, in aggregate, Ten Million U.S. Dollars (\$10,000,000);
- (b) An additional One Million Five Hundred Thousand U.S. Dollars (\$1,500,000) at such time Owner's Gross Sales from the sale, transfer, or disposition (including gift, charitable contribution, condemnation, or otherwise) of the Property (or any portion thereof) reaches, in aggregate, Twenty Five Million U.S. Dollars (\$25,000,000); and
- (c) An additional One Million Five Hundred Thousand U.S. Dollars (\$1,500,000) at such time Owner's Gross Sales from the sale, transfer, or disposition (including gift, charitable contribution, condemnation, or otherwise) of the Property (or any portion thereof) reaches, in aggregate, Fifty Million U.S. Dollars (\$50,000,000).

For purposes of this Section 6, "Gross Sales" shall mean the aggregate sales prices of the Property (or any portion thereof) to all Persons, in which such sale, transfer, or disposition

- 2 -

Lehman and WWK bought out this future mgmt agmt for \$1mm at the Lehman Aug 2006 closing...

Mgmt Agmt contemplated paying Urban \$4.5mm of the first \$85mm of real estate sales on the Waikapuna development parcel...

Prosecutorial Misconduct for Rule 33**Kristen Peca LIES about Northern Trust notification and SHOCK**

Kristen Peca tried to claim that during the May 8, 2009 meeting in their Ohio home – she was already aware of the DEFAULT (*untrue – see below*) and was “**mad**” at Kenner – going so far as to comment on it to the EDNY court...

20 Q. You said it wasn't an investment.
 21 Did the defendants discuss various investments
 22 with you in that conversation in your home in May 2009?
 23 A. Well, again, Tommy was doing 95 percent of the
 24 talking so that's who I'm referring to. Phil wasn't
 25 saying much. He knew how mad we were with him and he was,

K. Peca - Direct/Komatireddy

717

1 just like now, very little eye contact.
 2 MR. HALEY: I object, your Honor.
 3 THE COURT: Sustained. The jury will disregard
 4 that.
 5 Don't comment on his demeanor in the courtroom,
 6 okay?
 7 THE WITNESS: Okay. Sorry.
 8 MR. HALEY: Thank you, Judge.

Now – on Kristen Peca's 2012 recorded call with Kenner – she told Kenner that she found out about the Northern Trust “**issues**” when she received an “**EMPTIED OUT**” statement in the mail. That is far different than receiving a **DEFAULT LETTER** as she fraudulently claimed to the EDNY.

(@ About 1:20.50) of the recorded call between Kristen Peca and Kenner --

Kristen Peca – OK – So then help me answer up some questions. Oh OK... With the Northern Trust loan.

Kenner – OK tell me. Go ahead and tell me what Berard has also told you, please.

Kristen Peca – I will. I will get to that in one second. But with the line of credit from our Northern Trust bond account which was our safety net, you knew that I was against that all along, that was supposed to be a 6-month thing, you guaranteed not a penny would ever go missing, and you know why I was so upset, **because we were never given any heads up by you or anyone that it was emptied out until we got a statement in the mail** and I thought I was going to have a heart attack when I saw that it was **emptied out**. That you said

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that you would make all payments, and that it was a six month thing, and that's it, ***it was just needed to quickly close, finish up loose ends in Hawai'i.***

Please note that Kristen Peca did not say for "***vertical construction***" like she and Michael Peca claimed to the EDNY. ***MORE PREMEDITATED PERJURY...***

Michael Peca was CLEARLY aware of the pending DEFAULT and decisions to let the bank seize the collateral (*but apparently he concealed that information with his wife*) – not to mention the fact that Michael Peca (*and all of the LOC clients*) had to speak on the phone with Northern Trust before they would seize the collateral – in case they wanted to continue the payments themselves – like Nolan did (*without Kenner*).

Kenner sent a text and spoke to Michael Peca and gave him a "***heads up***" on the day that Northern Trust sent the initial February 2009 DEFAULT LETTER – as follows – thus ***FULL TRANSPARENCY*** --

6350	+171637432 34 Michael Peca*	2/10/2009 8:13:58 PM(UTC+0)	Sent	Northern Trust sent you a letter. Call me when you get it	
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But – on the 2012-recorded call – Kristen Peca clearly confirms that her husband did not tell her the truth about the Northern Trust investment LOC.

Kristen Peca – Don't you think that you should have called and told us so, common decency? That kinda pissed me off, Phil, to get the statement in the mail. That's an understatement. But.

Kenner – I cannot do anything about that today, Kristen.

...

Kenner – All I can do is apologize that YOU weren't told before you got the statement. I can't do anything about it now.



- ***PLEASE NOTE -- Kenner is not referring to himself – but referring to Michael Peca not telling his wife...***

Kristen Peca – I know. But.

Kenner – I am sorry for that.

Kristen Peca -- OK

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See R33 700 -- Kristen Peca LIED about receiving the Northern Trust DEFAULT letter in OHIO

Only the March 2009 DEFAULT LETTER had to be signed for (not the monthly bank statements since Kristen Peca said she received "EMPTIED OUT" on the 2012 phone call with Kenner) -

*The DEFAULT LETTER was mailed to NY while she was in Ohio - **and would not have been forwarded by FedEx!***


Thus -- a FRAUD on the EDNY Court by Kristen Peca...

Please note that Michael Peca signed December 2007 renewal documents (*that Kristen Peca said on the 2012 recording she was unaware of - about 2:11.40 -- see below*)...

Now -- to confirm the fabrication of the lie about receiving the DEFAULT letter -

Kristen Peca claimed in EDNY testimony that she received mail that she "**had to sign for**" (*see arrow above*). Please note that the March DEFAULT letter from Northern Trust was sent FedEx & certified mail. The problem with Kristen Peca's testimony is one of two issues:

- 1) If Kristen Peca **signed for the mail**, then she would have been in Buffalo, NY while her husband was playing hockey in Columbus OHIO (*in March 2009*), thus she could not have stood in her kitchen in shock until "**Michael came home**" ..., or
- 2) Kristen Peca lied about "**signing for the mail**" to help corroborate the government story about receiving the March 19, 2009 letter.
 - a. If she really signed for the mail and was shocked on or about March 19, 2009 - then why would Kristen Peca "**f'n loose it**" according to Michael Peca's text to Kenner on May 1, 2009 (*5 weeks later*) due to finding out about the pay off of the loan? She would have previously been aware...

 68 51	+1716 37432 34 Michael Peca*	5/1/2009 5:57:01 PM(UTC+ 0)	Read	Get in touch with Glen yet. Also, NT sent an email to my wifes aol acct. Attached is the transfer info. She's going to f'n loose it when she sees loan paid
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Northern Trust

Dated March 19, 2009

VIA FEDERAL EXPRESS AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED--PERSONAL AND CONFIDENTIAL

Mr. Michael Peca
46 Golden Pheasant Dr. Ste #5500
Getzville NY 14068

Re: NOTICE OF DEFAULT AND INTENT TO SELL COLLATERAL

Michael Peca confirmed (below) via text to Kenner that he received the mail on or about May 22, 2009 in Buffalo and items had been in the PO Box for months – completely refuting Kristen Peca's SUBORNED PERJURY about receiving anything from Northern Trust before the GSF meeting!

The Kristen Peca LIED about receiving the DEFAULT letter (while in OHIO) and her SHOCK comments were egregious, prejudicial and outrageous. Kristen Peca, &/or the government should be held accountable for this fabrication and the perpetration of their contrived lies to the court.

SINCE -- Kristen Peca was in OHIO in March 2009 and not NY where the FedEx and Certified Mail were sent, then it is also possible that Kristen Peca and Michael Peca **NEVER** received the March letter (although Michael Peca was aware of the February 2009 DEFAULT letter per Kenner's text -- above).

If she did, Kristen Peca would have spoken to Northern Trust at that time to give them the temporary address in OHIO for the mailing so she could "**sign for the mail**" (although not on the default letter)– thus – no matter what the explanation – Kristen Peca LIED to support the government's theory of CONCEALMENT!

On the recorded phone call with Kenner -- Kristen Peca had "**no memory of LOC renewals signed by Michael Peca**" in 2012 –

(@ About 2:11.40) –

Kenner – What I can tell you is that you guys signed 5 or 6 annual renewals on that deal, and the only reason we are having this conversation, Kristen, the only reason, is because Ken Jowdy defrauded us and didn't pay us the money back. And the guys from Lehman Brothers helped Alan Worden not pay us the \$4mm (MILESTONES). That's nine and a half million dollars (\$9.5mm) that should have been paid back to the group in Hawai'i, which is far in excess...

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Kristen Peca – I understand that explanation. I do. But, if renewals had to be signed, ***which I don't remember signing them, maybe Michael did, maybe you did as Power of Attorney***, obviously...

Kenner -- ***Nope, I never did as Power of Attorney. You guys signed them all.***

Kristen Peca – ***OK. Well, if we had to sign them, which I do not remember doing,***
I'm not saying we didn't, we signed a ton of papers for you...

Clearly – Kristen Peca could have heard from her husband about the “***use of funds***” over that extended period of time (*or not*), since the ***Disbursement Request and Authorization*** signed by Peca on or about 7-1-2005, only two (2) months after the initiation of the LOC confirmed \$1,600,000 was already spent and another \$175,000 was available – frankly due to the ***EXTENSION OF CREDIT*** form that Michael Peca signed (*apparently unknown to Kristen Peca*).

In fact – much closer to the actual collateral seizure event (*only 4 months afterwards*) – which would have occurred after being defrauded and Kristen Peca's ***SHOCKED*** incident – Kristen Peca tells Kenner that she and Michael Peca would like to take Kenner's girlfriend and kids (“*kiddos*”) out to a “***nice night***” while they are there (*in AZ for a family vacation*)...

See R33 601 -- Kristen Peca contradictory email to Kenner after alleged SHOCK incident

Despite all of this – there is not one text or email from Michael Peca or Kristen Peca chastising Kenner for the alleged misdeeds – ***NOT ONE!***

In fact – on the same day (& *only 2 hours later*) that Kristen Peca uses the Kristen Peca & Michael Peca joint email to talk about vacation plans with Kenner in AZ – the following email was sent from Kenner to the Pecas confirming the “***loans***” from Hawai'i that were lent to Jowdy –

See R33 423 -- Peca September 2009 "Jowdy loans" email

This TRANSPARENT statement to Peca about the Jowdy loans could not have been more clear – YET -- NO response came back from the Pecas – stating – “***What loans to Jowdy?***” -- &/or – “***You never mentioned the loans before***”...

In fact – Michael Peca signed the Baker disclosure in the AZ loan case versus Jowdy within days of the “loans” email to Kristen Peca and Michael Peca.

See R33 A -- Baker Little Isle 4 Disclosure letters -- Michael Peca letter

Now – in addition -- Kenner sent Peca the following text (5/1/2009) the same day and just ***prior*** to Michael Peca realizing that his wife's AOL account received a PAYOFF email (*which Michael Peca DELETED*) -- *prompting the Michael Peca text -- “***fn loose it***”* -- for the LOC – which put Peca in a panic. (***Kenner RESPONSES in RED***)

684	+1716374	5/1/2009 3:00:52	Rea	<i>I'll be great when the Hawaii</i>
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3	3234 Michael Peca*	PM(UTC+0)	d	<i>capital accts are paid back.</i> Any news there?	
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8037	+1716374323 4 Michael Peca*	5/1/2009 3:05:57 PM(UTC+0)	Sent	<i>I hear you clearly. Me too. Working on it with john kaiser.</i>	
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- Thus – Kaiser (*as the Managing Member of Na'alehu Ventures 2006*) was fully in the loop about recovering the UNPAID loans from Jowdy for the Hawai'i partners.

684 6	+1716374 3234 Michael Peca*	5/1/2009 3:37:28 PM(UTC+0)	Rea d	<i>Anything new on that</i>	
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8040	+1716374323 4 Michael Peca*	5/1/2009 3:39:08 PM(UTC+0)	Sent	<i>Just slowly moving thru the process. We have to get all the other legal hammered out in the meantime. <u>We are making great progress versus Jowdy. That will lead the rest of the deals like the Hawaii loans, etc</u></i>	
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684 7	+1716374 3234 Michael Peca*	5/1/2009 3:40:29 PM(UTC+0)	Rea d	What's the timing look like	
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Michael Peca had direct access to Kaiser at that tie and could have followed-up with any other Hawai'i &/or Jowdy concerns.

NOW -- The Pecas (*allegedly mad at Kenner*) were coming to AZ to vacation with Kenner in 2009 (*shortly after the alleged SHOCK incident*) and allegedly (*at least according to the fabricated EDNY testimony*) could not get a hold of Kenner easily. ***More sheer suborned buffoonery.***

In 2009 – from the date of the ***first notice of default letter*** (*February 2009*) – until the end of 2009 Kenner sent **about 275** TEXT ONLY messages to Michael Peca.

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And – Michael Peca sent **about 580** responses to Kenner during the same February 2009 thru December 2009 time frame – which Kristen Peca said Kenner was not reachable.

Now – despite the impossible timing of the **EMPTIED OUT STATEMENT** getting to Kristen Peca *before the GSF meeting* in early May 2009 – Michael Peca confirmed that when he got back to Buffalo in late May 2009 (*after the GSF meeting – confirming Kristen Peca's PERJURY*) -- after his hockey season in Columbus Ohio was over – he received all of his mail that went to his NY home (*like all of the Northern Trust bank statements*) – as follows –

741 5	+1716374 3234 Michael Peca*	5/22/2009 5:46:27 PM(UTC+0)	Read	<i>Just got all my mail at the Post office. Had stuff that's been here for months.</i> Included was the Ins stuff for Palms. Explains a lot. Call me over the wk end.
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CLEARLY – Kristen Peca made-up her testimony in front of the EDNY Court – since there is no confirmation possible that she received the statements that had been sent to her NY address – while she was in Ohio (*per her own husband's text to Kenner 2 weeks after the GSF meeting – above*).

This fraud and the fact that the **DEFAULT LETTERS** (*also sent to NY – certified – thus not forwarded*) could not have reached Kristen Peca until after May 22 – that date of the Michael Peca text to Kenner.

Prosecutorial Misconduct for Rule 33

Sydor and Rucchin LIE about loss of collateral knowledge

Each of the Northern Trust LOC clients was required to speak to a banker at Northern Trust (*Aaron Mascarella and Catherine Brill*) before the bank seized their collateral in case they wanted to continue making the LOC monthly payments on their own (*as the DEFAULT Letter suggested*) – like Owen Nolan did after speaking with the bank.

Second – each of the Northern Trust clients transferred their remaining (*post-seizure*) funds to their investment accounts at Charles Schwab (*under Kenner's management*). In order of that April 2009 transfer to occur – each of the Northern Trust clients had to sign a transfer authorization form. Kenner did **NOT** have Power of Attorney &/or the ability to transfer the remaining funds out of their Northern Trust account to any third party account without their signed authorization.

Thus – it was impossible for Sydor, Rucchin &/or any of the Northern Trust LOC clients to have been unaware of the multiple steps REQUIRED by Northern Trust in order to allow –

1. The seizure of collateral,
 2. The transfer the remainder funds from their investment accounts to Charles Schwab (*or anywhere else – like Berard did (see Berard texts to Kenner)*), and
 3. Sign the proper Northern Trust documents to CLOSE the accounts after the final transfers were made.
- Please note that none of these documents – which would have been required by Northern Trust – were included in the Northern Trust bank subpoenaed materials, which was only partially filled.
 - Without the signed transfer instructions – there would be no other way for Northern Trust Bank to have received the 8 individual wire instructions from the clients. Under no circumstances could that have occurred.

Notwithstanding the Northern Trust protocols that the government clearly ignored while seeking the conviction of Kenner at trial – Sydor and Rucchin gave the following perjured testimony.

See R33 800 – Sydor aware of NT DEFAULT LETTER

Rucchin echoed the same sentiments as Sydor about not finding out about the LOC issues until years later – despite the same protocols required for Sydor and every other LOC client of Northern Trust.

See R33 803 -- Rucchin Northern Trust LOC texts

Prosecutorial Misconduct for Rule 33

The Tequila Red Herring --

During the trial – AUSA Michiewicz proffered (*in concert with Kaiser's suborned perjury*) without any proof ever presented that Kenner had fraudulently diverted funds from the GSF to a tequila company in México that Michiewicz alleged Kenner was trying to buy.

NO tequila company was ever purchased – at any point in time –despite the government's proffers.

See R33 804 -- The Tequila Red Herring

Prosecutorial Misconduct for Rule 33

At the time of the Kenner Indictment and detainment – there were several pending or open lawsuits against critical government witnesses adverse to Kenner as follows --

- Peca defrauded Kenner over \$750,000 at Las Vegas Palms (*litigation was pending in 2013-14, Nevada*),
- McKee defrauded Kenner over \$650,000 at Las Vegas Palms (*litigation was pending in 2013-14, Nevada*),
- Berard and Kaiser defrauded Kenner in Sag Harbor over \$250,000 (*AZ litigation open in 2013 - cv2013-052349*),
- Berard and Kaiser defrauded Kenner in Arizona with fraudulent conveyance of title over \$1mm (*AZ litigation open in 2013 – cv2012-055576*),
- Jowdy and Kaiser defrauded Kenner in México April 21, 2014 over \$100mm (*no litigation possible – with Kenner under EDNY detainment*),
- Kaiser aware of being sued for Na'alehu Ventures 2006 fiduciary breach in 2013-14 by Kenner and the Na'alehu Ventures 2006 investors (*was Pending 2013, Arizona*),
- Jowdy defrauded Kenner over \$100mm (*3rd new México litigation open in 2013 – with arrest warrant for Jowdy and property receivership in December 2013 – STOPPED due to Kenner Indictment and arrest one month earlier in November 2013*), and
- Kenner 2013 wrongful termination case over \$2mm (*re-filed after case tampering by Jowdy's attorneys – OPEN versus Jowdy and Diamanté in México -- dismissed due to Kenner's Indictment and inability to prosecute*)